

## **TITLE 8 PUBLIC UTILITIES AND PROPERTY**

<b>CHAPTER:</b>	<b>SUBJECT:</b>
1	Sewers
2	Airport Regulations and Fees
3	Parks
4	Water Service
5	Electric Service
6	Sanitation Service
7	Public Right of Way Construction
8	Use of Public Sidewalks
9	Trees and Shrubbery
10	Maintenance and Construction of Sidewalks and Curbs
11	Cemetery Regulations
12	Airport Passenger Facility Charges
13	Public Fiber Optic Network
14	Construction Site Erosion Control

## **CHAPTER 1 SEWERS**

### **SECTION:**

- 8-1-1: Purpose
- 8-1-2: Definition of Terms
- 8-1-3: Abbreviations
- 8-1-4: Administration
- 8-1-5: Scope of Chapter
- 8-1-6: Sewage to be Discharged Into Wastewater Treatment System
- 8-1-7: Storm Water Not Permitted in Sanitary Sewer
- 8-1-8: Unpolluted Water Discharged to Storm Drain
- 8-1-9: National Pretreatment Standards: Prohibited Discharges
- 8-1-10: National Pretreatment Standards: Categorical Standards
- 8-1-11: State Requirements
- 8-1-12: Local Limits
- 8-1-13: Right of Revision
- 8-1-14: Dilution
- 8-1-15: Special Agreements
- 8-1-16: Approval Required for Wastewater
- 8-1-17: Pretreatment Facilities
- 8-1-18: Deadlines for Compliance with Applicable Pretreatment Requirements
- 8-1-19: Additional Pretreatment Measures
- 8-1-20: Accidental Spill Prevention Plans
- 8-1-21: Connection to Sanitary Sewer Required
- 8-1-22: Sewer Service
- 8-1-23: Sewer Service Connection Fees
- 8-1-24: Sewer Service Repair
- 8-1-25: Permit Required to Work on Public Sewer
- 8-1-26: Notice of Inspection
- 8-1-27: Right to Revoke Permission
- 8-1-28: Sewer Construction Specifications
- 8-1-29: Submission of Information
- 8-1-30: Injury to Sewerage System Unlawful
- 8-1-31: State Requirement
- 8-1-32: Accidental Discharges/Slug Control Plans
- 8-1-33: Wastewater Discharge Permit Requirements
- 8-1-34: Wastewater Discharge Permits—Existing SIU's
- 8-1-35: Wastewater Discharge Permits—New Sources and New User
- 8-1-36: Wastewater Discharge Permits Extra-Jurisdictional Users
- 8-1-37: Wastewater Discharge Permit Application Contents
- 8-1-38: Signatory and Certification Required
- 8-1-39: Wastewater Discharge Permit Decisions
- 8-1-40: Wastewater Discharge Permit Contents

8-1-41:	Wastewater Discharge Permit Appeals
8-1-42:	Wastewater Discharge Permit Duration
8-1-43:	Wastewater Discharge Permit Modification
8-1-44:	Wastewater Discharge Permit Transfer
8-1-45:	Wastewater Discharge Permit Revocation
8-1-46:	Wastewater Discharge Permit Reissuance
8-1-47:	Final and Initial Compliance Reports
8-1-48:	Periodic Compliance Report
8-1-49:	Compliance Schedules for Applicable Pretreatment Standards
8-1-50:	Notification of Significant Production Changes
8-1-51:	Hazardous Waste Notification
8-1-52:	Notice of Potential Problems, Including Accidental Spills, Slug Loadings
8-1-53:	Non-Compliance Reporting
8-1-54:	Notification of Changed Discharge
8-1-55:	Reserved
8-1-56:	Reports From Unpermitted Users
8-1-57:	Record Keeping
8-1-58:	Sampling Requirements for Users
8-1-59:	Analytical Requirements
8-1-60:	Monitoring of User's Wastewater
8-1-61:	Inspection and Sampling
8-1-62:	Monitoring Facilities
8-1-63:	Search Warrants
8-1-64:	Confidential Information
8-1-65:	Publication of Users in Significant Non-Compliance
8-1-66:	Notification of Violation
8-1-67:	Consent Orders
8-1-68:	Show Cause Hearing
8-1-69:	Compliance Orders
8-1-70:	Cease and Desist Orders
8-1-71:	Administrative Fines
8-1-72:	Emergency Suspensions
8-1-73:	Termination of Discharge (Non-Emergency)
8-1-74:	Injunctive Relief
8-1-75:	Civil Penalties
8-1-76:	Criminal Prosecution
8-1-77:	Remedies Non-Exclusive
8-1-78:	Performance Bonds
8-1-79:	Liability Insurance
8-1-80:	Termination of Utility Services
8-1-81:	Public Nuisances
8-1-82:	Informant Rewards
8-1-83:	Contractor Listing
8-1-84:	Affirmative Defenses to Discharge Violations
8-1-85:	Sewer User Service Charge

8-1-86:	Computation of Industrial Waste Service Charge
8-1-87:	Transition Rates for Industrial Users
8-1-88:	(Repealed)
8-1-89:	Woodruff Avenue Interceptor
8-1-90:	Grease Interceptor
8-1-91:	Interceptors Required to Remove Harmful Ingredients
8-1-92:	Septic Tank Waste
8-1-93:	(Repealed)
8-1-94:	Classification of Users
8-1-95:	Domestic and Commercial Rates Outside the City
8-1-96:	Billing Periods
8-1-97:	Billing Procedure
8-1-98:	Due Date
8-1-99:	Delinquent Accounts
8-1-100:	Pretreatment Charges and Fees
8-1-101:	Recovery of Cost by City
8-1-102:	Falsifying Information
8-1-103:	Limitation of Liability
8-1-104:	Penalty

8-1-1:       PURPOSE: This Chapter sets forth uniform requirements for Users of the POTW for the City of Idaho Falls and enables the City to comply with all applicable State and Federal laws including the Clean Water Act and the General Pretreatment Regulations (40 CFR, Part 403). The objectives of this Chapter are:

(A)       To prevent the introduction of pollutants into the POTW that will interfere with the operation of the POTW;

(B)       To prevent the introduction of pollutants into the POTW which will pass through the POTW, inadequately treated, into receiving waters of or otherwise be incompatible with the POTW;

(C)       To ensure that the quality of the wastewater treatment plant sludge is maintained at a level which allows its use and disposal in compliance with applicable statutes and regulations;

(D)       To protect POTW personnel who may be affected by wastewater and sludge in the course of their employment and to protect the general public;

(E)       To improve the opportunity to recycle and reclaim wastewater and sludge from the POTW.

(F)       To establish an equitable distribution of the cost of operating the POTW;  
and

(G) To establish an equitable means, through the collection of a sewer main connection fee, of requiring persons connecting to an existing sewer main which directly benefits their property, to participate in the costs of installing such main; and

(H) To establish an equitable means through a sewer service connection fee of requiring persons who connect to the sanitary sewer system and the wastewater treatment plant to participate in the capital costs of constructing the entire system and to pay the direct costs of making such connection. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-2: DEFINITION OF TERMS: Certain terms used in this Chapter shall have the meanings herein given to them:

ACT: The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. § 1251, et seq.

APPLICABLE PRETREATMENT STANDARDS: For any specified pollutant, City prohibitive standards, City specific pretreatment standards, State of Idaho pretreatment standards, or EPA's Categorical Pretreatment Standards, whichever standard is appropriate or most stringent.

APPROVAL AUTHORITY: The Regional Administrator of the United States Environmental Protection Agency (EPA), Region 10.

AUTHORIZED REPRESENTATIVE OF THE USER:

(A) If the User is a corporation:

- (1) The president, secretary, treasurer, or a vice-president treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
- (2) The manager of one or more manufacturing, production, or operation facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with appropriate corporate procedures;

(B) If the User is a partnership or sole proprietorship: a general partner or proprietor, respectively;

(C) If the User is a Federal, State or local governmental facility: a director or the highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or his/her designee.

(D) The individuals described in paragraphs 1 through 3 above may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City.

**BEST MANAGEMENT PRACTICES (BMP):** Means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Section 8-1-9 of this Chapter. BMP also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

**BIOCHEMICAL OXYGEN DEMAND (BOD):** The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20 degrees Celsius, usually expressed as a concentration (milligrams per liter (mg/l).

**BUILDING DRAIN:** That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the buildings and conveys it to the side sewer which begins two feet (2') outside the outer face of the building wall or foundation.

**CATEGORICAL PRETREATMENT STANDARD OR CATEGORICAL STANDARD:** Any regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. 1317) which apply to a specific category of Users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

**CATEGORICAL USER:** A User regulated by one of EPA's Categorical Pretreatment Standards.

**CITY:** The City of Idaho Falls, Idaho.

**CLEAN WATER ACT:** The Clean Water Act of 1977 as codified in 33 USC Section 1251 et. seq.

**CODE OF FEDERAL REGULATIONS OR C.F.R.:** The United States Code of Federal Regulations.

**COLOR:** The optical density at the visual wave length of maximum absorption, relative to distilled water. One-hundred percent (100%) transmittance is equivalent to zero (0.0) optical density.

**COMBINED SEWER:** A sewer receiving both surface runoff and sanitary wastewater.

**COMPOSITE SAMPLE:** The sample resulting from the combination of individual wastewater samples taken at selected intervals based on an increment of either flow or time.

**COOLING WATER/NON-CONTACT COOLING WATER:** Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product. Cooling water may be generated from any use, such as air conditioning, heat exchangers, cooling or refrigeration to which the only pollutant added is heat.

**DIRECTOR:** The Director of the Public Works Department of the City or his duly authorized deputy, agent or representative.

**DISCHARGE:** The introduction of pollutants into the POTW from any non-domestic source regulated under Section 307(b), (c), or (d) of the Act. The discharge into the POTW is normally by means of pipes, conduits, pumping stations, force mains, constructed drainage ditches, surface water intercepting ditches, and all constructed devices and appliances appurtenant thereto.

**DOMESTIC USER:** Any person who contributes, causes, or allows the contribution of wastewater into the POTW that is of a similar volume and/or chemical make-up as that of a residential dwelling unit. Discharges from a residential dwelling unit typically include up to 100 gallons per capita per day, 0.2 pounds of BOD per capita per day, and 0.17 pounds of TSS per capita per day.

**DWELLING UNIT:** A building or structure or portion thereof that is constructed and used primarily for residential purposes, or any building or structure which has been constructed or altered to provide for two (2) or more families or households or which has been constructed or altered to accommodate travelers or transients.

**EFFECTIVE DATE:** The effective date of the ordinance adopting this Chapter.

**ENVIRONMENTAL PROTECTION AGENCY:** The United States Environmental Protection Agency or, where appropriate the Director of the Region 10 Office of Water and Watersheds or other duly authorized official of said agency.

**EXISTING SOURCE:** A categorical industrial User, the construction or operation of whose facility commenced prior to the publication by EPA of proposed categorical pretreatment standards, which would be applicable to such source if and when the standard is thereafter promulgated in accordance with Section 307 of the Act.

**EXISTING USER:** Any non-categorical User which was discharging wastewater prior to January 5, 1984, the effective date of this Chapter.

**GARBAGE:** The residue from the preparation, cooking and dispensing of food, and from the handling, storage and sale of food products and produce.

**GRAB SAMPLE:** A sample which is taken from a wastestream on a one-time basis without regard to the flow in the wastestream and without consideration of time.

**INDIRECT DISCHARGE:** The introduction of pollutants into the POTW from any non-domestic source regulated under Section 307(b), (c), or (d) of the Act. The discharge into the POTW is normally by means of pipes, conduits, pumping stations, force mains, constructed drainage ditches, surface water intercepting ditches, and all constructed devices and appliances appurtenant thereto.

**INDUSTRIAL USER:** A source of indirect discharge. The source shall not include "Domestic User" as defined in this Chapter.

**INTERFERENCE:** A discharge which alone or in conjunction with a discharge or discharges from other sources, either: (1) inhibits or disrupts the POTW, its treatment processes or operations; (2) inhibits or disrupts its sludge processes, use or disposal; or (3) is a cause of a violation of the City's NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

**MAXIMUM ALLOWABLE DISCHARGE LIMIT:** The maximum concentration (or loading) of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

**MEDICAL WASTES:** Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes and dialysis wastes.

**NEW SOURCE:**

(A) Any building, structure, facility or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

- (1) The building, structure, facility or installation is constructed at a site at which no other source is located; or
- (2) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or



- (3) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

(B) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of Section (1)(b) or (c) above, but otherwise alters, replaces or adds to existing process or production equipment.

(C) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

- (1) Begun, or caused to begin as part of a continuous on-site construction program:
  - (a) any placement, assembly or installation of facilities or equipment; or
  - (b) Significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly or installation of new source facilities or equipment; or
- (2) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss and contracts for feasibility, engineering and design studies do not constitute a contractual obligation under this paragraph.

**NEW USER:** A "New User" is a User that is not regulated under federal categorical pretreatment standards but that applies to the City for a new building permit or who occupies an existing building and plans to commence discharge of wastewater to the City's collection system after the Effective Date of this Chapter. Any person that buys an existing facility that is discharging non-domestic wastewater will be considered an "existing User" if no significant changes are made in the manufacturing operation.

**PASS THROUGH:** A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or dischargers from other sources, is a cause of a violation of any requirement of the City's NPDES permit (including an increase in the magnitude or duration of a violation).

**PERMITTEE:** A person or User issued a wastewater discharge permit.

**PERSON:** Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all Federal, State, or local governmental entities.

**pH:** A measure of the acidity or alkalinity of a substance, expressed in standard units.

**POLLUTANT:** Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, agricultural and industrial wastes, and the characteristics of the wastewater (i.e., pH, temperature, TSS, turbidity, color, BOD, Chemical Oxygen Demand (COD), toxicity or odor.

**PRETREATMENT:** The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40 CFR 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR 403.6 (e)

**PRETREATMENT REQUIREMENTS:** Any substantive or procedural requirement related to pretreatment imposed on a User, other than a pretreatment standard.

**PRETREATMENT STANDARDS:** Pretreatment prohibited discharge standards, categorical pretreatment standards, and local limits and best management practices ("BMP's") as established by the City.

**PRIVATE SEWER:** All sewers and sewer service lines except public sewers.

**PROHIBITED DISCHARGE STANDARDS OR PROHIBITED DISCHARGES:** Absolute prohibitions against the discharge of certain substances, which appear in Section 8-1-9 (A) and (B) of this Chapter.

**PUBLICLY OWNED TREATMENT WORKS (POTW):** A "treatment works," as defined by Section 212 of the Act (33 U.S.C. 1292) which is owned by the City. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant. The term also means the City.

**PUBLIC SEWER:** The sewer main line which discharges directly or indirectly into the POTW and which is owned by the City and located on public property or within a publicly-owned easement.

**RCRA:** The Resource Conservation and Recovery Act as adopted by the United States as the same exists on the date hereof or as may be amended hereafter.

**SANITARY SEWAGE:** Wastes that are derived principally from dwellings, business buildings, institutions and other places of habitation or occupation exclusive of storm and surface water.

**SANITARY SEWER:** A sewer that conveys, or which is intended to convey, sanitary sewage or industrial wastes, or a combination of the two.

**SEPTIC TANK WASTE:** Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

**SERVICE CHARGE:** The charge assessed by the City for use of the POTW.

**SEWAGE:** Human excrement and gray water (household showers, dishwashing operations, etc.).

**SEWER:** Any pipe, conduit ditch, or other device used to collect and transport sewage from the generating source.

**SEWER SERVICE LINE:** A pipe or conduit for conveying wastewater.

**SEWER SERVICE LINE:** The pipe extension from the building drain to the public sewer, including the tap into the main line and that part of the pipe extension located in the public right-of-way.

**SHALL, MAY:** "Shall" is mandatory, "may" is permissive.

**SIGNIFICANT INDUSTRIAL USER (SIU):**

(A) A User subject to Categorical Pretreatment Standards; or,

(B) A User that:

(1) Discharges an average of 25,000 gpd or more of process wastewater into the POTW (excluding sanitary, non- contact cooling and boiler blowdown wastewater); or

(2) Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

- (3) Is designated as such by the City on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

(C) Upon finding that a User meeting the criteria in Subsection two (2) has no reasonable potential for adversely affecting the POTW's operation or for violating any applicable pretreatment standard or requirement, the City may at any time, on its own initiative or in response to a petition received from a User, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such User should not be considered a significant industrial User.

**SLUG LOAD:** Any discharge at a flow rate or concentration which could cause a violation of the discharge standards in Sections 8-1-9 through 8-1-12 of this Chapter or any discharge of a non-routine, episodic nature, including but not limited to, an accidental spill or a non-customary batch discharge.

**STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODE:** A classification pursuant to the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.

**STORM DRAIN:** A pipe or conduit conveying Storm Water, surface and ground water drainage and which does not convey sanitary sewage or industrial wastes.

**STORM WATER:** Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

**TREATMENT PLANT EFFLUENT:** The discharge from the POTW into waters of the United States.

**TOTAL SUSPENDED SOLIDS (TSS):** The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.

**TOXIC POLLUTANT:** One of 126 pollutants, or combination of those pollutants, listed as toxic in regulations promulgated by EPA under Section 307 (33 U.S.C. 1317) of the Act.

**TREATMENT WORKS:** Those devices and systems defined in Section 35.905-23 of the Federal Register, Vol. 39, Number 29, Pt. III, published February 11, 1974.

**UNPOLLUTED WATER:** Any water or liquid containing none of the following substances: free or emulsified grease or oil; acids or alkalis; substances that may impart taste or color characteristics; toxic or poisonous substances in suspension, colloidal state or solution; odorous or otherwise obnoxious gases.

**UPSET:** An exceptional incident in which a discharger unintentionally and temporarily is in a state of noncompliance with the standards set forth in this Chapter due to factors beyond the reasonable control of the discharger, and excluding noncompliance to the extent caused by

operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation thereof.

USER: Any person who discharges wastewater into the POTW.

WASTEWATER: Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities and institutions, whether treated or untreated, which are contributed to the POTW.

WASTEWATER DISCHARGE PERMIT: An authorization or equivalent control document issued by the City to Users discharging wastewater to the POTW. The permit may contain appropriate pretreatment standards and requirements as set forth in this Chapter.

WASTEWATER TREATMENT PLANT: That portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste. (Ord. 2278, 4-23-98; Ord. 2609, 7-28-05; Ord. 2684, 12-14-06)

8-1-3: ABBREVIATIONS: The following abbreviations shall have the designated meanings:

ASPP:	Accidental Spill Prevention Plan
BOD:	Biochemical Oxygen Demand
CFR:	Code of Federal Regulations
COD:	Chemical Oxygen Demand
EPA:	U.S. Environmental Protection Agency
GPD:	Gallons per day
IWA:	Industrial Waste Acceptance
l:	Liter
LEL:	Lower Explosive Limit
mg:	Milligrams
mg/l:	Milligrams per liter
NPDES:	National Pollutant Discharge Elimination System
O&M:	Operations and Maintenance
POTW:	Publicly Owned Treatment Works
RCRA:	Resource Conservation and Recovery Act
SIC:	Standard Industrial Classifications
SIU:	Significant Industrial User
WWTP:	The Wastewater Treatment Plant
SWDA:	Solid Waste Disposal Act (42 U.S.C. § 6901, et seq.)
TSS:	Total Suspended Solids
USC:	United States Code

(Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-4:           **ADMINISTRATION:** Except as otherwise provided herein, the Director shall administer, implement and enforce the provisions of this Chapter. Any powers granted to or duties imposed upon the Director may be delegated to other City personnel. (Ord. 2223, 1-9-97)

8-1-5:           **SCOPE OF CHAPTER:** This Chapter shall apply to all Users of the POTW, regardless of whether or not such User is located within the boundaries of the City. The City shall administer, implement, and enforce the provisions of this Chapter. (Ord. 2223, 1-9-97)

8-1-6:           **SEWAGE TO BE DISCHARGED INTO WASTEWATER TREATMENT SYSTEM:** All sanitary sewage, industrial waste or other waters containing any pollutant shall be discharged into the POTW. No person shall dispose of sewage, waste or polluted waters into the POTW except through an authorized connection to the POTW or unless otherwise expressly permitted by this Chapter. No person shall discharge sewage, waste or water containing any pollutant into the public sewer through a manhole, unless expressly authorized by the Sewer Superintendent. (Ord. 2357, 12-22-99)

8-1-7:           **STORM WATER NOT PERMITTED IN SANITARY SEWER:** No person shall discharge or cause to be discharged any storm water, ground water, roof runoff, sub-surface drainage, cooling water or unpolluted water from any source other than the City water system, into the POTW. (Ord. 2223, 1-9-97)

8-1-8:           **UNPOLLUTED WATER DISCHARGED TO STORM DRAIN:** All storm water shall be discharged to such sewers as are expressly designated or approved by the City as combined sewers or storm drains, or to a natural outlet approved by the City. Industrial cooling water or unpolluted process water may be discharged upon approval of the City to a storm drain, combined sewer or natural outlet. (Ord. 2223, 1-9-97)

8-1-9:           **NATIONAL           PRETREATMENT       STANDARDS:           PROHIBITED DISCHARGES:**

                  (A)    **General Prohibitions:** No User shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all Users of the POTW whether or not they are subject to categorical pretreatment standards or any other national, state or local pretreatment standards or requirements.

                  (B)    **Specific Prohibitions:** No User shall introduce or cause to be introduced into the POTW the following pollutants, substances or wastewater:

- (1)   Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140 degrees F (60 degrees C) using the test methods specified in 40 CFR 261.21;

- (2) Wastewater having a pH less than 5.5 or more than 9.0, or otherwise causing corrosive structural damage to the POTW or equipment in the WWTP;
- (3) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference, but in no case solids greater than one-half inch (1/2") in any dimension;
- (4) Pollutants, including oxygen-demanding pollutants released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;
- (5) Wastewater having a temperature which will inhibit biological activity in the WWTP resulting in interference, but in no case wastewater which causes the temperature at the introduction into the WWTP plant to exceed 104EF (40EC) unless the Director approves alternate temperature limits in writing;
- (6) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;
- (7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quality that may cause acute worker health and safety problems;
- (8) Trucked or hauled pollutants, except at discharge points designated by the City;
- (9) Noxious or malodorous liquids, gases, solids, or other wastewater which either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life or health, or to prevent entry into the sewers for maintenance or repair;
- (10) Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating the City's NPDES permit. Color in combination with turbidity shall not cause the treatment plant effluent to reduce the depth of the compensation point for photosynthetic activity by more than ten percent (10%) from the seasonably established norm for aquatic life;

- (11) Wastewater containing any radioactive wastes or isotopes except as specifically approved in writing by the Director in compliance with applicable State or Federal regulations;
- (12) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, non-contact cooling water, and unpolluted wastewater, unless specifically authorized by the Director;
- (13) Any sludges, screenings, or other residues from the pretreatment of industrial wastes or from industrial processes;
- (14) Medical wastes, except as specifically authorized by the Director;
- (15) Wastewater causing, along or in conjunction with other sources, the WWTP's effluent to fail a toxicity test;
- (16) Detergents, surface-active agents, or other substances which may cause excessive foaming in the POTW;
- (17) Any liquid, solids, or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the POTW or to the operation of the POTW. At no time shall two (2) successive readings on an explosion meter, at the point of discharge into the system (or at any point in the system), be more than five percent (5%) nor any single reading over ten percent (10%) of the lower explosive limit (LEL) of the meter;
- (18) Grease, garbage other than ground garbage, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dusts, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, gas, tar asphalt residues, residues from refining or processing of fuel or lubricating oil, mud, or glass grinding or polishing wastes.;
- (19) Any substance which will cause the POTW to violate its NPDES and/or other disposal system permits;
- (20) Any wastewater, which in the opinion of the Director can cause harm either to the sewers, WWTP or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property or constitute a nuisance, unless allowed under a special agreement approved in writing by the Director,



except that no special waiver shall be given from categorical pretreatment standards;

- (21) The contents of any tank or other vessel owned or used by any person in the business of collecting or pumping sewage, effluent, septic tank waster, or other wastewater unless said person has first obtained testing and approval as may be generally required by the City and paid all fees assessed for the privilege of said discharge;
- (22) Any hazardous waste as prohibited or regulated by the State of Idaho or 40 CFR Part 261;
- (23) Persistent pesticides and/or pesticides regulated by the Federal Insecticide Fungicide Rodenticide Act (FIFRA).

Pollutants, substances or wastewater prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-10: NATIONAL PRETREATMENT STANDARDS: CATEGORICAL STANDARDS: The National Categorical Pretreatment Standards as amended and promulgated by EPA pursuant to the Act and as found at 40 CFR Chapter I, Subchapter N, Parts 405-471, are hereby incorporated and shall be enforceable under this Chapter.(Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-11: STATE REQUIREMENTS: State requirements and limitations on discharges to the POTW shall be met by all Users which are subject to such standards in any instance in which they are more stringent than federal requirements and limitations, or those in this Chapter or any other applicable Chapter of the City Code. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-12: LOCAL LIMITS: The following pollutant limits are established to protect against pass-through and interference. No person shall discharge wastewater containing pollutant levels in excess of the following daily maximum allowable discharge limits.

Parameter	Daily Maximum
Arsenic	0.04 mg/l
Cadmium	0.26 mg/l
Chromium (total)	2.77 mg/l
Copper	1.93 mg/l
Cyanide	1.04 mg/l

Lead	0.29 mg/l
Mercury	0.002 mg/l
Nickel	2.38 mg/l
Oil and grease (petroleum or mineral oil products)	100.00 mg/l
Oil and grease (animal and vegetable-based)	250.00 mg/l
Silver	0.43 mg/l
Zinc	0.90 mg/l

The above limits apply at the point where the wastewater is discharged to the POTW (end of the pipe). All concentrations for metallic substances are for "total" metal unless indicated otherwise. The Director may impose mass limitations in addition to, or in place of, the concentration-based limitations above. Where a User is subject to a categorical pretreatment standard and a local limit for a given pollutant, the more stringent limit or applicable pretreatment standard shall apply.

POTW's may develop Best Management Practices ("BMP's") to implement paragraphs as listed in 40 CFR 403.5 (c) (1) and (2). Such BMP's shall be considered local limits and Pretreatment Standards for the purpose of this Chapter and Section 307 (d) of the Act. (Ord. 2278, 4-23-98; Ord. 2609, 7-28-05; Ord. 2684, 12-14-06)

8-1-13:       **RIGHT OF REVISION:** The City reserves the right to establish, by ordinance or in wastewater discharge permits, more stringent standards or requirements on discharges to the POTW. (Ord. 2223, 1-9-97)

8-1-14:       **DILUTION:** No User shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with an applicable pretreatment standard or requirement unless expressly authorized by an applicable pretreatment standard or requirement. The Director may impose mass limitations on Users which he believes may be using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate. (Ord. 2223, 1-9-97)

8-1-15:       **SPECIAL AGREEMENTS:** The City reserves the right to enter into special agreements with Users setting out special terms under which they may discharge to the POTW. In no case will a special agreement waive compliance with a categorical pretreatment standard or federal pretreatment requirement. However, the User may request a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15. They may also request a variance from the categorical pretreatment standard from the approval authority in accordance with 40 CFR 403.13. (Ord. 2223, 1-9-97)

8-1-16:       **APPROVAL REQUIRED FOR WASTEWATER:** No User shall discharge wastewater into the POTW without having first filed an application with the Director and having obtained a permit to discharge wastewater into the POTW. At the time of such application, the applicant shall provide sufficient information concerning the nature, concentration and quantity of his waste or such other information as may be reasonably necessary for the Director to assure compliance with this Chapter. Upon receipt of said application, the Director shall review the same and if necessary, inspect the property and facilities of the applicant to determine if said facilities are in compliance with the provisions of this Chapter. Upon making such determination, the Director shall forthwith issue a permit to the applicant authorizing discharge of waste to the public sewer. All significant industrial Users shall in addition comply with the provisions of Sections 8-1-33 through 8-1-46 of this Chapter. Such permit may be issued upon conditions reasonably necessary to assure compliance with this Chapter, including, but not limited to, the following:

(A) Limits on the average and maximum wastewater constituents and characteristics;

(B) Limits on average and maximum rate and time of discharge or requirements for flow regulations and equalization;

(C) Requirements for installation and maintenance of inspection and sampling facilities;

(D) Conditions concerning sampling locations, frequency of sampling, number, types and standards for tests and a reporting schedule therefor;

(E) Compliance schedules;

(F) Periodic submission of technical reports or other discharge reports necessary to determine compliance with this Chapter, and the frequency of monitoring of the discharge;

(G) Any other condition reasonably necessary to assure compliance with this Chapter. (Ord. 2223, 1-9-97)

8-1-17:       **PRETREATMENT FACILITIES:** Users shall provide necessary wastewater treatment as required to comply with this Chapter and shall achieve compliance with all applicable pretreatment standards and requirements set out in this Chapter within the time limitations specified by the EPA, the State, or the Director, whichever is more stringent. Any facilities required to pretreat wastewater to a level acceptable to the City shall be provided, operated and maintained at the User's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the City for review, and shall be acceptable to the City before construction of the facility. The review of such plans and operating procedures will in no way relieve the User from the Responsibility of modifying the facility as necessary to produce an acceptable discharge to the City under the provisions of this Chapter. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-18: DEADLINES FOR COMPLIANCE WITH APPLICABLE PRETREATMENT REQUIREMENTS: Compliance by existing Users covered by categorical pretreatment standards shall be accomplished within three (3) years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate Standard. The City shall establish a final compliance deadline date for any existing User not covered by categorical pretreatment standards or for any categorical User when the local limits for said User are more restrictive than the federal Categorical Pretreatment Standards.

New Source Dischargers and New Users are required to comply with applicable pretreatment standards within the shortest feasible time not to exceed ninety (90) days from the beginning of discharge. New Sources and New Users shall install and have in operating condition, and shall start-up all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge.

Any wastewater discharge permit issued to a Categorical User shall not contain a compliance date beyond any deadline date established in EPA's Categorical Pretreatment Standards. Any other existing User or a categorical User that must comply with a more stringent local limit, which is in non-compliance with any local limits shall be provided with a compliance schedule placed in an industrial wastewater permit to ensure compliance within the shortest time feasible. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-19: ADDITIONAL PRETREATMENT MEASURES:

(A) Whenever deemed necessary, the Director may require Users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the User's compliance with the requirements of this Chapter.

(B) Grease, oil, and sand interceptors shall be provided when, in the opinion of the Director, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand, except that such interceptors shall not be required for residential Users. All interception units shall be of type and capacity approved by the Director and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the User at its expense.

(C) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter. (Ord. 2223, 1-9-97; Ord. 2609, 7-28-05; Ord. 2684, 12-14-06)

8-1-20: ACCIDENTAL SPILL PREVENTION PLANS: The Director may require any User to develop and implement an accidental spill prevention plan (ASPP) or slug control plan. Where deemed necessary by the City, facilities to prevent accidental discharge or slug discharges of pollutants shall be provided and maintained at the User's cost and expense. An accidental spill prevention plan or slug control plan showing facilities and operating procedures to provide this

protection shall be submitted to the City for review and approval before implementation. The City shall determine which User is required to develop a plan and require said plan to be submitted within thirty (30) days after notification by the City. Each User shall implement its ASPP as submitted or as modified after such plan has been reviewed and approved by the City. Review and approval of such plans and operating procedures by the City shall not relieve the User from the responsibility to modify its facility as necessary to meet the requirements of this Chapter.

(A) Any User required to develop and implement an accidental spill prevention plan shall submit a plan which addresses, at a minimum, the following:

- (1) Description of discharge practices, including non-routine batch discharges;
- (2) Description of stored chemicals;
- (3) Procedures for immediately notifying the POTW of any accidental or slug discharge. Such notification must also be given for any discharge which would violate any of the standards in Sections 8-1-9 through 8-1-12 of this Chapter; and
- (4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic chemicals (including solvents), and/or measures and equipment for emergency response.

(B) Users shall notify the City Wastewater Treatment Plant immediately after the occurrence of a slug or accidental discharge of substances regulated by this Chapter. The notification shall include location of discharge, date and time thereof, type of waste, concentration and volume, and corrective actions. Any affected User shall be liable for any expense, loss, or damage to the POTW, in addition to the amount of any fines imposed on the City on account thereof under state or federal law.

(C) Within five (5) days following an accidental discharge, the User shall submit to the Director a detailed written report describing the cause of the discharge and the measures to be taken by the User to prevent similar future occurrences. Such notification shall not relieve the User of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, fish kills, or any other damage to person or property nor shall such notification relieve the User of any fines, civil penalties, or other liability which may be imposed by this Chapter or other applicable law.

(D) Signs shall be permanently posted in conspicuous places on the User's premises advising employees whom to call in the event of a slug or accidental discharge. Employers shall instruct all employees who may cause or discover such a discharge with respect to emergency notification procedures. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-21: CONNECTION TO SANITARY SEWER REQUIRED: Every building or structure located within the City and from which any wastewater is discharged shall be connected to the public sanitary sewer if such sewer is within two hundred feet (200') of such building or structure. All connections to the sewer shall be made at the expense of the owner or person having control thereof. Any person who fails to make such connection within ninety (90) days after receiving a notice from the City advising him of the availability of the sewer, shall be guilty of a misdemeanor. (Ord. 2223, 1-9-97)

8-1-22: SEWER SERVICE LINE: A separate and independent sewer service line shall be installed for every building using or required to use the POTW. Separate sewer service lines are not required for each space in a travel trailer court nor for any dwelling unit having a total living area of five hundred square feet or less. (Ord. 2278, 4-23-98)

8-1-23: SEWER SERVICE CONNECTION FEES:

(A) Permits Required: No person shall install or alter any sanitary sewer within the City, or tap onto or connect to any sanitary sewer line, whether lateral, main or interceptor, without first obtaining a permit from the City.

(B) Sewer Connection Fees: Before any permit is issued for the installation or alteration of any sanitary sewer or before any connection is made to any sanitary sewer line, whether lateral, main or interceptor, the applicant shall pay to the City a sewer connection fee in an amount set from time to time by Resolution of the Council, for the following:

Single Family Dwelling;  
Mobile Home Courts or Mobile Home Subdivisions;  
Motels, Hotels, Boarding Houses, Travel Trailer Courts;  
Trailer Courts;  
Apartment Houses, Duplexes, Condominiums and similar living units; and  
Commercial Buildings

A separate sewer connection permit must be obtained for each building or trailer court or cabin court using the sanitary sewer system of the City, and except as otherwise provided herein, the service connection fee must be paid whenever a plumbing permit is required by the City. Once the required sewer service connection fee has been paid for any building connected to the POTW, no further connection fee shall be charged for the connection of any sewer serving any building constructed or reconstructed at the same place, or so near the same place that no substantial extension of the original side sewer is necessary to serve it. If a connection permit was issued after January 1, 1958, the connection fee is deemed to have been paid; in all other

cases, proof of payment of the fee shall be furnished by the applicant, and in the absence of such proof, a connection fee shall be charged.

(C) **Sewer Main Connection Charge.** Before connecting to any sewer main constructed in whole or in part at City expense, all persons desiring such connection shall pay a sewer main connection fee in an amount set from time to time by Resolution of the Council per front foot of property owned by such person and fronting upon a street or public right of way within which a sewer main is located. Despite the foregoing, if any person requests annexation to the City and as part of such annexation also requests connection to such sewer main, then the fee shall be due in full at the time such property is annexed to the City. If any such property is located upon a corner or is bounded by two or more streets in which a sewer main is located, the calculation for the fee shall be based upon the frontage of the longest street in which a sewer main is located. All sewer mains within the City shall be deemed to have been constructed in whole or in part at City expense, unless the applicant presents written evidence conclusively demonstrating such main was constructed entirely from private monies or was constructed entirely with funds from a state or federal grant. If any person constructs a sewer main entirely at his or her expense, the City may, by written agreement, pay over to such person all sewer main connection fees collected by the City from any other person who subsequently connects to such sewer main.

(D) **Sanitary Sewer Capital Improvement Fund:** There is hereby established a Sanitary Sewer Capital Improvement Fund to be supervised and managed by the City Treasurer. All sewer service connection fees and sewer main fees collected under this Chapter shall be deposited into said Fund and shall be distributed only for the purposes set forth below.

(E) **Disbursement of Funds:** Disbursements may be made from the Sanitary Sewer Capital Improvement Fund for the following purposes only:

- (1) Capital improvements to the sanitary treatment facilities.
- (2) Extensions to the sanitary sewer system, including lateral, mains and interceptors.
- (3) Payment of principal and interest on any general obligation or revenue bond or bonds issued by the City to defray the cost of construction, extension or improvement of the sanitary sewer system.
- (4) Reimbursement of sewer main fees to a developer who has constructed a sewer main or any portion thereof for which sewer main fees have been collected from any other property owner served by such sewer main. (Ord. 2312, 2-25-99; Ord. 2964, 8-14-14)

8-1-24: **SEWER SERVICE REPAIR:** When any sewer service line or private sewer connected to the public sewer becomes obstructed, broken or out of order, the owner, agent or tenant of such premises shall repair the same at his own expense. (Ord. 2278, 4-23-98)

8-1-25: **PERMIT REQUIRED TO WORK ON PUBLIC SEWER:** No person shall uncover, disturb, construct, repair or extend any part of the public sewer or any private sewer located within a public row without first obtaining a sewer service excavation permit. No person shall extend any private sewer or sewer service beyond the limits of the building or property for which a permit has been given without obtaining a permit for the desired extension. The issuance of a sewer service permit shall not be construed to permit any work for which a public right of way excavation permit is required by this Code. (Ord. 2278, 4-23-98)

8-1-26: **NOTICE OF INSPECTION:** No person shall make connection to any public sewer without first giving advance notice to the Director at least five (5) hours prior to the time of making such connection, provided however if such connection is located within a public right of way, no further notice shall be required beyond the requirements of Section 8-7-6 of this Code. Notices given on any Saturday or legal holiday will not be accepted. All connections must be made in accordance with the City Standard Drawings and Specifications and shall be inspected by the City before the trench is filled. (Ord. 2223, 1-9-97)

8-1-27: **RIGHT TO REVOKE PERMISSION:** All sewer service excavation permits issued under this Chapter may be revoked upon failure of the holder of the permit to comply with this Chapter or the construction standards set forth in the City Standard Drawings and Engineering Specifications. (Ord. 2223, 1-9-97)

8-1-28: **SEWER CONSTRUCTION SPECIFICATIONS:** All construction or reconstruction on public and private sewer services shall be in accordance with City Standard Drawings and Engineering Specifications. (Ord. 2223, 1-9-97)

8-1-29: **SUBMISSION OF INFORMATION:** Plans, specifications and any other pertinent information relating to proposed pretreatment or processing facilities shall be submitted for approval to the approving authority prior to the start of their construction if the effluent from such facilities is to be discharged into the public sewers. (Ord. 2223, 1-9-97)

8-1-30: **INJURY TO SEWERAGE SYSTEM UNLAWFUL:** No person shall willfully or negligently break, damage, destroy, uncover, deface, tamper with or prevent access to any structure, appurtenance or equipment, or other part of the POTW. No person shall deposit into the POTW any substance which will likely obstruct the flow of wastewater in the POTW. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-31: **STATE REQUIREMENT:** State standards and limitations on discharges to the POTW shall be met by all Users where such standards are more stringent than the standards in this or any other applicable Chapter. (Ord. 2223, 1-9-97)

8-1-32: **ACCIDENTAL DISCHARGES/SLUG CONTROL PLANS:**

(A) The Director may require any User to develop and implement an accidental discharge/slug control plan ("ASPP"). Where deemed necessary by the City, facilities to prevent accidental discharge or slug discharges of pollutants shall be provided and maintained



at the User's cost and expense. An accidental spill prevention plan/slug control plan showing facilities and operating procedures to provide this protection shall be submitted to the City for review and approval before implementation. The City shall determine which User is required to develop a plan and require said plan to be submitted within thirty (30) days after written notification by the City that an ASPP is required. Each User shall implement its ASPP as submitted or as modified after such plan has been reviewed and approved by the City. Review and approval of such plans and operating procedures by the City shall not relieve the User from the responsibility to modify its facility as necessary to meet the requirements of this Chapter.

(B) Any User required to develop and implement an ASPP shall submit a plan which addresses, at a minimum, the following:

- (1) Description of discharge practices, including non-routine batch discharges;
- (2) Description of stored chemicals;
- (3) Procedures for immediately notifying the POTW of any accidental or slug discharge. Such notification must also be given for any discharge which would violate any of the standards in Sections 8-1-9 through 8-1-12 of this Chapter; and
- (4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents) and/or measures and equipment for emergency response.

(C) Users shall notify the Director immediately upon the occurrence of a "slug" or "accidental discharge" of substances regulated by this Chapter. The notification shall include location of discharge, date and time thereof, type of waste, concentration and volume and corrective actions. Any affected User shall be liable for any expense, loss or damage to the POTW, including the amount of any fines imposed on the City on account thereof under state or federal law.

(D) Within five (5) days following an accidental discharge, the User shall submit to the Director a detailed written report describing the cause of the discharge and the measures to be taken by the User to prevent similar future occurrences. Such notification shall not relieve the User of any expense, loss, damage or other liability which may be incurred as a result of damage to the POTW, fish kills, or any other damage to person or property; nor shall such notification relieve the User of any fines, civil penalties or other liability which may be imposed by this Chapter or other applicable law.

(E) Signs shall be permanently posted in conspicuous places on the User's premises advising employees whom to call in the event of a slug or accidental discharge. Employers shall instruct all employees who may cause or discover such a discharge with respect to emergency notification procedures. (Ord. 2223, 1-9-97)

8-1-33: **WASTEWATER DISCHARGE PERMIT REQUIREMENTS:** No significant industrial User shall discharge wastewater into the POTW without first obtaining a wastewater discharge permit from the Director. Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this Chapter and subjects the wastewater discharge permittee to the sanctions set forth in this Chapter. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all federal and state pretreatment standards or requirements or with any other requirements of Federal, State and local law. The Director may require other Users, including liquid waste haulers, to obtain wastewater discharge permits (as necessary) to carry out the purposes of this Chapter. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-34: **WASTEWATER DISCHARGE PERMITS—EXISTING SIU'S:** Any SIU that was discharging wastewater into the POTW prior to the Effective Date and that wishes to continue such discharges in the future shall submit, within sixty (60) days after notification by the Director a permit application to the City in accordance with Section 8-1-37 of this Chapter. The City's notification to SIU's covered by categorical pretreatment standards will be in ample time to ensure that the SIU's comply with the 180-day submittal deadline date established in 40 CFR § 403.12(b). (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-35: **WASTEWATER DISCHARGE PERMITS—NEW SOURCES AND NEW USERS:** At least ninety (90) days prior to the anticipated start-up, any New Source, which is a source that becomes a User subsequent to the proposal of an applicable categorical pretreatment standard that is later promulgated, and any New User considered by the City to fit the definition of a SIU, shall apply for a wastewater discharge permit and will be required to submit to the City at least the information listed in paragraphs (A) through (E) of Section 8-1-37. A New Source or New User cannot discharge without first receiving a wastewater discharge permit from the City. New Sources and New Users shall be required to include in their application information on the method of pretreatment the User intends to use to meet applicable pretreatment standards. New Sources and New Users shall give estimates of the information requested in paragraphs (D) and (E) of Section 8-1-37. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-36: **WASTEWATER DISCHARGE PERMITS; EXTRA-JURISDICTIONAL USERS:** Any Existing User who is located beyond the City limits and who is required to obtain a wastewater discharge permit shall submit a wastewater discharge permit application as outlined in Section 8-1-37. New Source and New Users located beyond the City limits are also required to obtain a wastewater discharge permit in accordance with Section 8-1-37. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-37: **WASTEWATER DISCHARGE PERMIT APPLICATION CONTENTS:** All Users required to obtain a wastewater discharge permit must submit, at a minimum, the following information. The Director shall approve a form to be used as a permit application.

Categorical Users submitting the following information shall be deemed to have complied with 40 CFR 403.12(b).

(A) Identifying Information. The User shall submit the name and address of the facility, including the name of the operator and owners;

(B) Permits. The User shall submit a list of any environmental control permits held by or for the facility;

(C) Description of Operations. The User shall submit a brief description of the nature, average rate of production, and Standard Industrial Classification of the operation(s) carried out by such Industrial User, including a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW; number and type of employees; hours of operation; each product produced by type, amount, process or processes, and rate of production; type and amount of raw materials processed (average and maximum per day) and the time and duration of discharges. This description should also include a schematic process diagram which indicates points of discharge to the POTW from the regulated or manufacturing processes; site plans; floor plans; mechanical and plumbing plans; and details to show all sewers, sewer connections, inspection manholes, sampling chambers and appurtenances by size, location and elevation.

(D) Flow Measurement.

(1) Categorical User: The User shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

- (a) Regulated or manufacturing process streams; and
- (b) Other streams as necessary to allow use of the combined wastestream formula of 40 CFR 403.6(e).

(2) Non-Categorical User. The User shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

- (a) Total process flow, wastewater treatment plant flow, total plant flow or individual manufacturing process flow as required by the Director.

The City may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

(E) Measurements of Pollutants.

(1) Categorical User:

- (a) The User shall identify the applicable pretreatment standards for each regulated or manufacturing process.
- (b) In addition, the User shall submit the results of sampling and analysis identifying the nature and concentration (or mass where required by the Categorical Pretreatment Standard or as required by the City) of regulated pollutants (including standards contained in Sections 8-1-9 through 8-1-12, as appropriate) in the discharge from each regulated or manufacturing process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations and shall conform to sampling and analytical procedures outlined in Sections 8-1-58 through 8-1-60.
- (c) The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.
- (d) Where an alternate concentration or mass limit has been calculated in accordance with 40 CRF 403.6(e) for a categorical User covered by a categorical pretreatment standard, this adjusted limit along with supporting data shall be submitted as part of the application.

(2) Non-Categorical User.

- (a) The User shall identify the applicable pretreatment standards for its wastewater discharge.
- (b) In addition, the User shall submit the results of sampling and analysis identifying the nature and concentration (or mass where required by the City) of regulated pollutants contained in Sections 8-1-9 through 8-1-12, as appropriate in the discharge. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations and shall conform to sampling and analytical procedures outlined in Sections 8-1-58 through 8-1-60.
- (c) The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this subsection.

(d) Where the Director has developed alternate concentration or mass limits because of dilution, this adjusted limit along with supporting data shall be submitted as part of the application.

(F) Certification. A statement, reviewed by an authorized representative of the User and certified by a qualified professional as outlined in Section 8-1-38, indicating whether the applicable pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (hereafter referred to as "O and M") or additional pretreatment is required for the User to meet the applicable pretreatment standards and requirements.

(G) Compliance Schedule. If additional pretreatment or O and M will be required to meet the applicable Pretreatment Standards, the User shall submit the shortest schedule by which the User will provide such additional pretreatment and/or O and M. The User's schedule shall conform with the requirements of Section 8-1-49 of this Chapter. The completion date in this schedule shall not be later than the compliance date established pursuant to Section 8-1-18 of this Chapter.

- (1) Where the User's Categorical Pretreatment Standard has been modified by removal allowance (40 CFR 403.7), the combined wastestream formula (40 CFR 403.6(e)), or a Fundamentally Different Factors variance (40 CFR 403.13) at the time the User submits the report required by this paragraph, the information required by paragraphs (F) and (G) of this Section shall pertain to the modified limits.
- (2) If the Categorical Pretreatment Standard is modified by a removal allowance (40 CFR 403.7), the combined wastestream formula (40 CFR 403.6(e)), and/or a Fundamentally Different Factors variance (40 CFR 403.13) after the User submits the report required by paragraphs (F) and (G) of this Section, then a report containing modified information shall be submitted by the User within sixty (60) days after the new limit is approved.

(H) The User shall submit any other information as may be deemed necessary by the Director to evaluate the wastewater discharge permit application.

Incomplete or inaccurate applications will not be processed and will be returned to the User for revision. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-38: **SIGNATORY AND CERTIFICATION REQUIRED:** All wastewater discharge permit applications and User reports must be signed by a duly authorized representative of the User. The duly authorized employee must be an individual holding a position of responsibility for the overall operation of the facility or the User's Pretreatment Program. This authorization must be made in a writing signed by the principal executive officer or ranking elected official for

the User and submitted to the Director prior to or together with the applications and reports being submitted by the User. The application shall contain the following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations." (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-39        **WASTEWATER DISCHARGE PERMIT DECISIONS:** The Director will evaluate the data furnished by the User and may require additional information. Within thirty (30) days of receipt of a complete wastewater discharge permit application, the Director will determine whether or not to issue a wastewater discharge permit. Upon a determination to issue, the permit shall be issued within thirty (30) days of full evaluation and acceptance of the data furnished. The Director may deny any application for a wastewater discharge permit if the application fails to conform to this Chapter in any respect. (Ord. 2223, 1-9-97)

8-1-40:        **WASTEWATER DISCHARGE PERMIT CONTENTS:**

(A)    Wastewater discharge permits shall include such conditions as are reasonably deemed necessary by the Director to prevent pass-through or interference, protect the quality of the body of water receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal and protect against damage to the POTW.

(B)    Wastewater discharge permits must contain the following conditions:

- (1)    A statement that indicates the wastewater discharge permit duration which in no event shall exceed five (5) years;
- (2)    A statement that the wastewater discharge permit is non-transferable without prior notification to and approval from the City, and provision for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;
- (3)    Applicable pretreatment standards and requirements, including any special State requirements;
- (4)    Self-monitoring, sampling, reporting, notification, submittal of technical reports, compliance schedules and record-keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency and sample type based on Federal, State and local law; and

- (5) Requirement for immediate notification to the City where self-monitoring results indicate non-compliance;
- (6) Requirement to report a by-pass or upset of a pretreatment facility;
- (7) Requirement to report immediately to the City all discharges, including slug loadings that could cause problems to the POTW;
- (8) Requirement for the SIU who reports non-compliance to repeat the sampling and analysis and submit results to the City within thirty (30) days after becoming aware of the violation.
- (9) A statement of applicable civil, criminal and administrative penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule.
- (10) Requirements to control Slug discharges, if determined by the POTW to be necessary.

(C) Wastewater discharge permits may contain, but need not be limited to, the following conditions:

- (1) Limits on the average or maximum rate of discharge, time of discharge and/or requirements for flow regulation and equalization;
- (2) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;
- (3) Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges;
- (4) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW
- (5) The unit charge or schedule of User charges and fees for the management of the wastewater discharge to the POTW;
- (6) Requirements for installation and maintenance of inspection and sampling facilities and equipment;

- (7) A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the term of the wastewater discharge permit;
- (8) Any special agreements the Director chooses to continue or develop between the City and User;
- (9) Other conditions as deemed appropriate by the Director to ensure compliance with this Chapter and state and federal laws, rules and regulations.

(Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-41:        **WASTEWATER DISCHARGE PERMIT APPEALS:**

(A) Any person, including the User, may petition the City to reconsider the terms of a wastewater discharge permit within twenty eight (28) days of its issuance.

(B) Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.

(C) In its petition, the appealing party must indicate the wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit.

(D) The effectiveness of the wastewater discharge permit shall not be stayed pending the appeal.

(E) If the City fails to act within twenty eight (28) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider a wastewater discharge permit, not to issue a wastewater discharge permit, or not to modify a wastewater discharge permit, shall be considered final administrative actions for purposes of judicial review.

(F) Aggrieved parties seeking judicial review of the final administrative wastewater discharge permit decision must do so by filing a petition for judicial review with the District Court of the Seventh Judicial District, Bonneville County, Idaho, within twenty-eight (28) days after the date such decision was signed and mailed or physically delivered to the User. Judicial review of such petitions shall be conducted in accordance with Rule 84 of the Idaho Rules of Civil Procedure and the Idaho Administrative Procedure Act to the extent such procedures do not expressly conflict with the provisions of this Chapter. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-42:        **WASTEWATER DISCHARGE PERMIT DURATION:** Wastewater discharge permits shall be issued for a specified time period, not to exceed five (5) years. Each wastewater



discharge permit will indicate a specific date upon which it will expire. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-43:        **WASTEWATER DISCHARGE PERMIT MODIFICATION:** The Director may modify the wastewater discharge permit for good cause including, but not limited to, the following:

(A)     To incorporate any new or revised Federal, State or local pretreatment standards or requirements;

(B)     To address significant alterations or additions to the User's operation, processes or wastewater volume or character since the time of wastewater discharge permit issuance;

(C)     A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;

(D)     Information indicating that the permitted discharge poses a threat to the POTW, City personnel or the receiving waters;

(E)     Violation of any terms or conditions of the wastewater discharge permit;

(F)     Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required report;

(G)     Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13;

(H)     To correct typographical or other errors in the wastewater discharge permit; or

(I)     To reflect a transfer of the facility ownership or operation to a new owner or operator, provided however modification for this purpose may not be allowed unless the wastewater discharge permit is transferable as provided in Section 8-1-44 of this Chapter. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-44:        **WASTEWATER DISCHARGE PERMIT TRANSFER:** Wastewater discharge permits may be reassigned or transferred to a new owner or operator only if the permittee gives at least thirty (30) days advance notice to the Director and the Director approves the wastewater discharge permit transfer. The notice to the Director must include a written certification by the new owner or operator which:

(A)     States that the new owner or operator has no immediate intent to change the facility's operations and processes;

(B)     Identifies the specific date on which the transfer is to occur; and

(C) Assumes full responsibility for complying with the existing wastewater discharge permit beginning on the date the transfer is to occur.

Failure to provide advance notice of a transfer renders the wastewater discharge permit voidable as of the date of facility transfer. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-45: WASTEWATER DISCHARGE PERMIT REVOCATION: Wastewater discharge permits may be revoked for, but not limited to, the following reasons:

(A) Failure to notify the Director of significant changes to the wastewater prior to the changed discharge;

(B) Failure to provide prior notification to the Director of changed conditions;

(C) Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;

(D) Falsifying self-monitoring reports;

(E) Tampering with monitoring equipment;

(F) Refusing to allow the Director or his or her nominee timely access to the facility premises and records, provided proper identification is displayed at the time access is requested;

(G) Failure to meet discharge limitations;

(H) Failure to pay fines;

(I) Failure to pay sewer charges;

(J) Failure to meet compliance schedules;

(K) Failure to complete a wastewater survey or the wastewater discharge permit application;

(L) Failure to provide advance notice of the transfer of a permitted facility; or

(M) If the City has to invoke its emergency provision as cited in Section 8-1-72 of this Chapter.

(N) Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this Chapter.

Wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership. All wastewater discharge permits issued to a particular User are void upon the issuance of a new wastewater discharge permit to that User. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-46:        **WASTEWATER DISCHARGE PERMIT REISSUANCE:** A User who is required to have a wastewater discharge permit shall apply for the reissuance of a wastewater discharge permit by submitting a complete wastewater discharge permit application, in accordance with Section 8-1-37 of this Chapter, a minimum of sixty (60) days prior to the expiration of the User's existing wastewater discharge permit. A User whose existing wastewater discharge permit has expired and who has submitted its re-application in the time period specified herein shall be deemed to have an effective wastewater discharge permit until the City issues or denies the new wastewater discharge permit. A User whose existing wastewater discharge permit has expired and who failed to submit its re-application in the time period specified herein will be deemed to be discharging without a wastewater discharge permit. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-47:        **FINAL COMPLIANCE REPORTS:**

(A) Within ninety (90) days following the date for final compliance of an existing Significant Industrial User with applicable pretreatment standards and requirements set forth in this Chapter, in Federal Categorical Standards, or in a waste water discharge permit, or in the case of a New Source or a New User considered by the City to fit the definition of an SIU, within ninety (90) days following commencement of the introduction of wastewater into the POTW, the affected User shall submit to the Director a report containing the information outlined in paragraphs (D) through (F) of Section 8-1-37.

(B) For Users subject to equivalent mass or concentration limits established by the City in accordance with procedures established in 40 CFR 403.6 (c), this report shall contain a reasonable measure of the User's long-term production rate. For all other Users subject to Categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the User's actual production during the appropriate sampling period. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-48:        **PERIODIC COMPLIANCE REPORT:**

(A) Any User that is required to have an industrial waste discharge permit and performs self-monitoring shall submit to the City during the months of June and December, unless required on other dates or more frequently by the City, a report indicating the nature of the effluent over the previous reporting period. The frequency of monitoring shall be as prescribed within the industrial waste discharge permit. At a minimum, Users shall sample their discharge at least twice per year.

(B) The report shall include a record of the concentrations (and mass if specified in the wastewater discharge permit) of the pollutants listed in the wastewater discharge permit that were measured and a record of all flow measurements (average and maximum) taken

at the designated sampling locations, and shall also include any additional information required by this Chapter or the wastewater discharge permit. Production data shall be reported if required by the wastewater discharge permit. Both daily maximum and average concentration (or mass, where required) shall be reported. If a User sampled and analyzed more frequently than what was required by the City or by this Chapter using methodologies in 40 CFR Part 136, it must submit all results of sampling and analysis of the discharge during the reporting period.

(C) Any User subject to equivalent mass or concentration limits established by the City or by unit production limits specified in the applicable categorical standards, shall report production data as outlined in Section 8-1-47(B) of this Chapter.

(D) If the City calculated limits to factor out dilution flows or non-regulated flows, the User will be responsible for providing flows from the regulated process flows, dilution flows and non-regulated flows.

(E) Flows shall be reported on the basis of actual measurement, provided, however, the City may accept reports of average and maximum flows estimated by verifiable techniques if the City determines that an actual measurement is not feasible.

(F) Discharges sampled shall be representative of the User's daily operations and shall be taken in accordance with the requirements specified in Sections 8-1-58 through 8-1-60 of this Chapter.

(G) The City may require reporting by Users that are not required to have an industrial wastewater discharge permit if information or data is needed to establish a sewer charge, determine the treatability of the effluent or determine any other factor which is related to the operation and maintenance of the sewer system.

(H) The City may require self-monitoring by the User or, if requested by the User, may agree to perform the periodic compliance monitoring needed to prepare the periodic compliance report required under this Section. If the City agrees to perform such periodic compliance monitoring, it may charge the User for such monitoring, based upon the costs incurred by the City for the sampling and analyses. Any such charges shall be added to the normal sewer charge and shall be payable as part of the User's sewer billing statement. The City shall be under no obligation to perform periodic compliance monitoring for a User. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

#### 8-1-49 COMPLIANCE SCHEDULES FOR APPLICABLE PRETREATMENT STANDARDS:

(A) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the User to meet the applicable pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).

(B) No increment referred to in paragraph (A) of this section shall exceed nine (9) months.

(C) Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the User shall submit a progress report to the City including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the User to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports. (Ord. 2223, 1-9-97)

8-1-50: NOTIFICATION OF SIGNIFICANT PRODUCTION CHANGES: Any User operating under a wastewater discharge permit incorporating equivalent mass or concentration limits shall notify the City within two (2) business days after the User has a reasonable basis to know that its production level will significantly change within the next calendar month. Any User not providing a notice of such anticipated change will be required to comply with the existing limits contained in its wastewater discharge permit. (Ord. 2223, 1-9-97)

8-1-51: HAZARDOUS WASTE NOTIFICATION:

(A) Any User that is discharging more than fifteen (15) kilograms of hazardous wastes as defined in 40 CFR 261 (listed or characteristic wastes) in a calendar month or any facility discharging any amount of acutely hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e) is required to provide a one-time notification in writing to the City, the EPA Region 10, Office of Air, Waste and Toxic Chemicals and, to the extent required by law and, the Idaho Department of Health and Welfare Division. Any existing User exempt from this notification, shall comply with the requirements contained herein within thirty (30) days of becoming aware of a discharge of fifteen (15) kilograms or greater of hazardous wastes in a calendar month or the discharge of acutely hazardous wastes to the City sewer system. Such notification shall include:

- (1) The name of the hazardous waste as set forth in 40 CFR Part 261;
- (2) The EPA Hazardous waste number;
- (3) The type of discharge (continuous, batch, or other); and
- (4) If an industrial User discharges more than 100 kilograms of such waste per calendar per month to the sewer system, the notification shall also contain the following information to the extent it is known or readily available to the Industrial User:
  - (a) An identification of the hazardous constituents contained in the wastes;

- (b) An estimation of the mass and concentration of such constituents in the wastestreams discharged during that calendar month; and
- (c) An estimation of the mass of constituents in the wastestreams expected to be discharged during the following twelve (12) months.

(B) These notification requirements do not apply to pollutants already reported under the self-monitoring requirements.

(C) Whenever the EPA publishes final rules identifying additional hazardous wastes or new characteristics of hazardous waste, a User shall notify the City of the discharge of such a substance within 90 days of the effective date of such regulations.

(D) In the case of any notification made under this paragraph, an industrial User shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06; Ord. 3003, 04-23-15)

8-1-52: NOTICE OF POTENTIAL PROBLEMS, INCLUDING ACCIDENTAL SPILLS, SLUG LOADINGS: Any User shall notify the City immediately of all discharges that could cause problems to the POTW, including any slug loads, as defined in Section 8-1-2. The notification shall also include the concentration and volume of the discharge, corrective action being taken or proposed to be taken and steps being taken to reduce any adverse impact on the POTW. Any User who discharges a slug load of pollutants shall be liable for any expense, loss, or damage to the POTW, in addition to the amount of any fines imposed on the City under State or Federal law. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-53: NON-COMPLIANCE REPORTING: If sampling performed by a User indicates a violation, the User shall notify the City within twenty-four (24) hours of becoming aware of the violation. The User shall also repeat the sampling within five (5) days and submit the results of the repeat analysis to the City within thirty (30) days after becoming aware of the violation. Where the City has performed the sampling and analysis in lieu of the Industrial User, the City must perform the repeat sampling and analysis unless it notifies the User of the violation and requires the User to perform the repeat analysis. Resampling is not required if:

(A) The City performs sampling at the Industrial User's location at a frequency of at least once per month; or

(B) The City performs sampling at the Industrial User's location between the time when the initial sampling was conducted and the time when the User receives the results of this sampling. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-54: NOTIFICATION OF CHANGED DISCHARGE: All Users shall promptly notify the City in advance of any substantial change in the volume or character of pollutants in their

discharge, including significant manufacturing process changes, pretreatment modifications, and the listed or characteristic hazardous wastes for which the User has submitted initial notification under 40 CFR 403.12 (p). (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-55 (RESERVED):

8-1-56: REPORTS FROM UNPERMITTED USERS: All Users not required to obtain a wastewater discharge permit shall provide appropriate reports to the City as the Director may require. (Ord. 2223, 1-9-97)

8-1-57: RECORDKEEPING : Users subject to the reporting requirements of this Chapter shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this Chapter and any additional records of information obtained pursuant to monitoring activities undertaken by the User independent of such requirements, including documentation associated with Best Management Practices. Records shall include the date, exact place, method, and time of sampling and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall be kept and made available to the City for a period of at least three (3) years after their creation. This period shall be automatically extended for the duration of any litigation concerning the User or POTW, or where the User has been specifically notified of a longer retention period by the Director. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-58: SAMPLING REQUIREMENTS FOR USERS:

(A) Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Director. The samples must be representative of the Discharge and the decision to allow the alternative sampling must be documented in the Industrial User file for that facility or facilities. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during the twenty-four (24) hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory. Composite samples for other parameters unaffected by compositing procedures as documented in approved EPA methodologies may be authorized by the Control Authority, as appropriate.

(B) For sampling required in support of baseline monitoring and ninety (90) day compliance reports, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Director may authorize a lower minimum. For the reports required by 40 CFR 403.12 (e) and (h), the Director shall require the number of grab samples necessary to assess and assure compliance by Industrial Users with Applicable Pretreatment Standards and Requirements.

(C) Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated or manufacturing process if no pretreatment exists or as determined by the City and contained in the User's wastewater discharge permit. For categorical Users, if other wastewaters are mixed with the regulated wastewater prior to pretreatment the User should measure the flows and concentrations necessary to allow use of the combined wastestream formula of 40 CFR 403.6(e) in order to evaluate compliance with the applicable Categorical Pretreatment Standards. For other SIUs, for which the City has adjusted its local limits to factor out dilution flows, the User should measure the flows and concentrations necessary to evaluate compliance with the adjusted pretreatment standards. In cases where the Standard requires compliance with a Best Management Practice or pollution prevention alternative, the User shall submit documentation as required by the City or the applicable Standard to determine compliance with the Standard.

(D) All sample results shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges from the User. If a User samples and analyzes more frequently than what was required in its wastewater discharge permit, using methodologies in 40 CFR Part 136, it must submit all results of sampling and analysis of the discharge as part of its self-monitoring report. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-59: ANALYTICAL REQUIREMENTS: All pollutant analyses, including sampling techniques, shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by the EPA. (Ord. 2223, 1-9-97)

8-1-60: MONITORING OF USER'S WASTEWATER: The City will follow the same procedures as outlined in Sections 8-1-58 and 8-1-59 whenever it deems City monitoring is appropriate to ensure compliance with this Chapter. (Ord. 2223, 1-9-97)

8-1-61: INSPECTION AND SAMPLING: The City shall have the right to enter the facilities of any User to ascertain whether the purposes of this Chapter, and any wastewater discharge permit or order issued hereunder, are being met and whether the User is complying with all requirements thereof. Users shall allow the Director ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying and the performance of any additional duties.

(A) Where a User has security measures in force which require proper identification and clearance before entry into its premises, the User shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the Director will be permitted to enter without delay for the purposes of performing specific responsibilities.



(B) The Director shall have the right to set up on the User's property, or require installation of, such devices as are necessary to conduct sampling or metering of the User's operations.

(C) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected or sampled shall be promptly removed by the User at the written or verbal request of the Director and shall not be replaced. The costs of clearing such access shall be borne by the User.

(D) Unreasonable delays in allowing the Director access to the User's premises shall be a violation of this Chapter. (Ord. 2223, 1-9-97)

8-1-62: MONITORING FACILITIES:

(A) Each User shall provide and operate at its own expense a monitoring facility to allow inspection, sampling and flow measurements of each sewer discharge to the City. Each monitoring facility shall be situated on the User's premises, except where such a location would be impractical or cause undue hardship on the User and the City approves such alternate location in writing.

(B) Ample room shall be provided in or near such sampling facility to allow accurate sampling and preparation of samples for analysis. The facility, including the sampling and measuring equipment, shall be maintained at all times in a safe and proper operating condition at the expense of the User.

(C) The Director may require the User to install monitoring equipment as necessary. All monitoring facilities shall be constructed and maintained in accordance with all applicable local construction standards and specifications. All devices used to measure wastewater flow and quality shall be calibrated to ensure their accuracy. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-63: SEARCH WARRANTS: If the Director has been refused access to a building, structure or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this Chapter, or that there is a need to inspect as part of a routine inspection program of the City designed to verify compliance with this Chapter or any wastewater discharge permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the Director may seek issuance of a search or seizure warrant from a court of competent jurisdiction. Such warrant shall be served in the manner allowed by law. (Ord. 2223, 1-9-97)

8-1-64: CONFIDENTIAL INFORMATION: Information and data on a User obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from City inspection and sampling activities, shall be available to the public without restriction, unless the User specifically requests, and is able to demonstrate to the satisfaction of the City, that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets under applicable state

law. When requested and demonstrated by the User furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other "effluent data" as defined by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-65: PUBLICATION OF USERS IN SIGNIFICANT NON-COMPLIANCE: The City shall publish annually, in the Official Newspaper, a list of the Users which, during the previous twelve (12) months, were in significant non-compliance with applicable pretreatment standards and requirements. For the purposes of this Chapter, a Significant Industrial User (or any Industrial User which violates subsections (C), (D), or (H) of this section) is in significant noncompliance if its violation meets one or more of the following criteria;

(A) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of wastewater measurements taken for the same pollutant parameter during a six (6) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(l);

(B) Technical Review Criteria ("TRC") violations, defined here as those in which thirty-three percent (33%) or more of all of the measurements taken for each pollutant parameter during a six (6) month period equal or exceed the product of the numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(l) multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

(C) Any other violations of a Pretreatment Standard or Requirement as defined by 40 CFR 403.3(l) (daily maximum, longer-term average, instantaneous limit, or narrative Standard) that the POTW determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public;

(D) Any discharge of pollutant that has caused imminent endangerment to human health, welfare or to the environment, or has resulted in POTW's exercise of its emergency authority under Section 8-1-72 of this Chapter to halt or prevent such a discharge;

(E) Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

(F) Failure to provide within forty-five (45) days after the due date, required reports, such as baseline monitoring reports, ninety (90) day compliance reports, periodic self-monitoring reports and reports on compliance with compliance schedules;

(G) Failure to accurately report noncompliance; or

(H) Any other violation or group of violations, which may include a violation of Best Management Practices, which the POTW determines will adversely affect the operation or implementation of the local Pretreatment program. (Ord. 2223, 1-9-97); Ord. 2684, 12-14-06)

8-1-66: NOTIFICATION OF VIOLATION: When the Director finds that a User has violated or continues to violate any provision of this Chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Director may serve upon that User a written Notice of Violation. Such Notice shall be conclusively deemed served upon its deposit in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the address specified in the User's application, or such other address which has been delivered to the City in writing. Within thirty (30) days after service of this notice, User shall similarly serve upon the Director an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions. Submission of this plan in no way relieves the User of liability for any violation occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the City to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-67: CONSENT ORDERS: The Director may enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any User responsible for non-compliance. Such documents will include specific action to be taken by the User to correct the non-compliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 8-1-69 and 8-1-70 of this Chapter and shall be judicially enforceable. Use of a Consent Order shall not be a bar against, or prerequisite for, taking any other action against the User. (Ord. 2223, 1-9-97)

8-1-68: SHOW CAUSE HEARING: The Director may order a User which has violated or continues to violate, any provision of this Chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, to appear before the Director and show cause why the proposed enforcement action should not be taken. Notice shall be served on the User specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the User show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail, return receipt requested, at least fifteen (15) days prior to the hearing. Such notice may be served on any Authorized Representative of the User. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the User. (Ord. 2223, 1-9-97)

8-1-69: COMPLIANCE ORDERS: When the Director finds that a User has violated or continues to violate any provision of this Chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Director may issue an order to the User responsible for the discharge directing that the User come into compliance within a time specified in the order. If the User does not come into compliance within the time specified in the

order, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders may also contain other requirements to address the non-compliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the User. (Ord. 2223, 1-9-97)

8-1-70:       CEASE AND DESIST ORDERS: When the Director finds that a User has violated, or continues to violate, any provision of this Chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, or that the User's past violations are likely to recur, the Director may issue an order to the User directing it to cease and desist all such violations and directing the User to:

(A)       Immediately comply with all requirements; and

(B)       Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the User. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-71:       ADMINISTRATIVE FINES; ATTORNEYS FEES AND COSTS:

(A) When the Director finds that a User has violated or continues to violate any provision of this Chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Director may fine such User in an amount set from time to time by Resolution of the Council. Such fines shall be assessed on a per violation, per day basis. In the case of monthly or other long term average discharge limits, fines shall be assessed for each day during the period of violation.

(B)       Unpaid charges, fines and penalties shall, after thirty (30) calendar days, be assessed an additional penalty of five percent (5%) of the unpaid balance, and interest shall accrue thereafter at a rate of twelve percent (12%) per year.

(C)       Users desiring to dispute such fines must file a written request for the Director to reconsider the fine along with full payment of the fine amount within fifteen (15) days of being notified of the fine. Upon receipt of such request, the Director shall convene a hearing on the matter within fifteen (15) days thereafter. In the event the User's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the User. The City may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.

(D)       Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the User.

(E) To the fullest extent permitted by law, the City shall be entitled to recover its reasonable attorney fees, court costs and other expenses associated with enforcement of this Chapter, including without limitation, sampling and monitoring expenses and all other damages sustained by the City as a direct result of a User's violation of the provisions of this Chapter. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06; Ord. 2964, 8-14-14)

8-1-72: EMERGENCY SUSPENSIONS: The Director may immediately suspend a User's discharge, after informal notice to the User, whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or which causes an imminent or substantial endangerment to the health or welfare of persons. The Director may also immediately suspend a User's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents or may present an endangerment to the environment.

(A) Any User notified of a suspension of its discharge shall immediately stop or eliminate its discharge into the POTW. In the event of a User's failure to immediately comply voluntarily with the suspension order, the Director shall take steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The Director shall allow the User to recommence its discharge when the User has demonstrated to the satisfaction of the City that the period of endangerment has passed, unless termination proceedings under Section 8-1-73 of this Chapter are initiated against the User.

(B) A User that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit to the Director a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, prior to the date of any show cause or termination hearing under Sections 8-1-68 and 8-1-73 of this Chapter.

Nothing in the section shall be interpreted as requiring a hearing prior to an emergency suspension under this section. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-73: TERMINATION OF DISCHARGE (NON-EMERGENCY): In addition to the provisions in Section 8-1-45 of this Chapter, any User that violates any of the following conditions is subject to discharge termination:

- (A) Violation of wastewater discharge permit conditions;
- (B) Failure to accurately report the wastewater constituents and characteristics of its discharge;
- (C) Failure to report significant changes in operations or wastewater volume, constituents and characteristics prior to discharge;
- (D) Refusal of reasonable access to the User's premises for the purpose of inspection, monitoring or sampling; or

(E) Violation of the pretreatment standards in Sections 8-1-9 through 8-1-21 this Chapter.

Such User will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 8-1-68 of this Chapter why the proposed action should not be taken. Exercise of this option by the City shall not be a bar to, or a prerequisite for, taking any other action against the User. (Ord. 2223, 1-9-97)

8-1-74: INJUNCTIVE RELIEF: When the Director finds that a User has violated, or continues to violate, any provision of this Chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the City may petition the Seventh Judicial District of the State of Idaho, Bonneville County through the City Attorney, for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this Chapter on activities of the User. The City may also seek such other action as is appropriate for legal or equitable relief, including a requirement for the User to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a User. (Ord. 2223, 1-9-97)

8-1-75: CIVIL PENALTIES:

(A) A User which has violated or continues to violate any provision of this Chapter, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the City for a maximum civil penalty in an amount set from time to time by Resolution of the Council. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.

(B) To the fullest extent permitted by State law, the Director may recover reasonable attorney fees, court costs and other expenses associated with enforcement activities, including sampling and monitoring expenses and the cost of any actual damages incurred by the City.

(C) In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration, any economic benefit gained through the User's violation, corrective actions by the User, the compliance history of the User, and any other factor as justice requires.

(D) Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a User. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06; Ord. 2964, 8-14-14)

8-1-76: CRIMINAL PROSECUTION:

(A) A User which has willfully or negligently violated any provision of this Chapter, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a misdemeanor.

(B) A User which has willfully or negligently introduced any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor. This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.

(C) A User which knowingly made any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this Chapter, wastewater discharge permit, or order issued hereunder or who falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method required under this Chapter shall, upon conviction, be guilty of a misdemeanor. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06; Ord. 2964, 8-14-14)

8-1-77:       **REMEDIES NON-EXCLUSIVE:** The provisions in Sections 8-1-65 through 8-1-83 of this Chapter are not exclusive remedies. The City reserves the right to take any, all, or any combination of these actions against a non-compliant User. Enforcement in response to pretreatment violations will generally be in accordance with the City's enforcement response plan. However, the City reserves the right to take other action against any User when the circumstances warrant. Further, the City may take more than one enforcement action against any non-compliant User. These actions may be taken concurrently. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-78:       **PERFORMANCE BONDS:** The Director may decline to issue or reissue a wastewater discharge permit to any User which has failed to comply with any provision of this Chapter, a previous wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement unless such User first files a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the Director to be necessary to achieve consistent compliance. (Ord. 2223, 1-9-97)

8-1-79:       **LIABILITY INSURANCE:** The Director may decline to issue or reissue a wastewater discharge permit to any User which has failed to comply with any provision of this Chapter, a previous wastewater discharge permit or order issued hereunder, of any other pretreatment standard or requirement, unless the User first submits proof that it has adequate general liability insurance or has provided other similar financial assurances sufficient to restore or repair damage to the POTW caused by its discharge. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-80:       **TERMINATION OF UTILITY SERVICES:** Whenever a User has violated or continues to violate any provision of this Chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, electric service, water service, or other public utility services to the User may be terminated in accordance with the procedures set forth in Section 8-5-17 of this Code. Service may be restored only upon proof that the User has

corrected its violation of the provisions of this Chapter and has provided satisfactory assurances that such violation will not recur. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-81: PUBLIC NUISANCES: A violation of any provision of this Chapter, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, is hereby declared a public nuisance and shall be corrected or abated as directed by the Director. Any person(s) creating a public nuisance shall be subject to the provisions of the City Code or state law governing such nuisances, including reimbursing the City for any costs incurred in removing, abating or remedying said nuisance. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-82: INFORMANT REWARDS: The City may, upon Resolution by the Council, pay a reward in an amount set from time to time by Resolution of Council for information leading to the discovery of non-compliance by a User. In the event that the information provided results in an administrative fine or civil penalty levied against the User, the City may, upon similar Resolution, authorize the disbursement of up to ten percent (10%) of the collected fine or penalty to the informant, provided however, a single reward payment may not exceed in an amount set from time to time by Resolution of the Council. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06; Ord. 2964; 8-14-14)

8-1-83: CONTRACTOR LISTING: Users which are not compliance with applicable pretreatment standards and requirements are not eligible to receive a contractual award for the sale of goods or services to the City. Existing contracts for the executory sale of goods or services to the City held by a User found to be in significant non-compliance with pretreatment standards or requirements may be terminated at the discretion of the City. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-84: AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS: The following affirmative defenses may be established by a User against whom any enforcement action or remedy is sought.

(A) Upset:

- (1) For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary non-compliance with applicable pretreatment standards because of factors beyond the reasonable control of the User. An upset does not include non-compliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.



- (2) An upset shall constitute an affirmative defense to an action brought for non-compliance with applicable pretreatment standards if the requirements of paragraph C of this Section are met.
- (3) A User who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - (a) An upset occurred and the User can identify the cause(s) of the upset;
  - (b) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
  - (c) The User has submitted the following information to the POTW and treatment plant operator within twenty-four (24) hours of becoming aware of the upset [if this information is provided orally, a written submission must be provided within five (5) days]:
    - (i) A description of the indirect discharge and cause of non-compliance;
    - (ii) The period of non-compliance, including exact dates and times or, if not corrected, the anticipated time the non-compliance is expected to continue; and
    - (iii) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the non-compliance.
- (4) In any enforcement proceeding, the User seeking to establish the occurrence of an upset shall have the burden of proof.
- (5) Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for non-compliance with applicable pretreatment standards.
- (6) Users shall control production of all discharges to the extent necessary to maintain compliance with applicable pretreatment standards upon reduction, loss, or failure of their treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among

other things, the primary source of power of the treatment facility is reduced, lost, or fails. (Ord. 2223, 1-9-97)

(B) Prohibited Discharge Standards. A User shall have an affirmative defense to an enforcement action brought against it for non-compliance with the prohibitions in Section 8-1-9 if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either: (a) a local limit exists for each pollutant discharged and the User was in compliance with each limit directly prior to, and during, the pass through or interference; or (b) no local limit exists, but the discharge did not change substantially in nature or constituents from the User's prior discharge when the City was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

(C) Bypass.

(1) For the purposes of this section:

- (a) "Bypass" means the intentional diversion of wastestreams from any portion of a User's treatment facility.
- (b) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) A User may allow any bypass to occur which does not cause applicable pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (3) and (4) of this Section.

- (3) (a) If a User knows in advance of the need for a bypass, it shall submit prior notice to the POTW, at least ten (10) days before the date of the bypass, if possible.
- (b) A User shall submit oral notice to the City of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times,

and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent recurrence of the bypass. The POTW may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

- (4) (a) Bypass is prohibited, and the POTW may take an enforcement action against a User for a bypass, unless:
  - (i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - (ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
  - (iii) The User submitted notices as required under paragraph three (3) of this section.
- (b) The POTW may approve an anticipated bypass, after considering its adverse effects, if the POTW determines that it will meet the three conditions listed in paragraph (4)(a) of this Section. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-85: SEWER USER SERVICE CHARGE: A monthly service charge for sewer service shall be charged to all Users. All charges to Users, shall be calculated in a manner that ensures each User will pay a fair share of the costs of operation, maintenance and capital equipment replacement based upon proportional usage of the sewer system and POTW. Charges may be based upon actual usage of waste treatment services or upon reasonable classifications of Users. The rates established shall generate sufficient revenue to defray the costs of operating and prudently managing the sewerage system, including but not limited to: (a) capital costs; (b) operation and maintenance costs; (c) replacement costs and reserves, and (d) debt service on bonded indebtedness. Sewer rates shall be established consistent with generally-accepted rate making principles and shall be reviewed periodically and adjusted if necessary to ensure all Users equitably share in the costs of operating the sewer system and POTW. User rates shall be established by resolution of the City Council, which resolution shall be kept on file in the office of the City Clerk. (Ord. 2357, 12-22-99)

8-1-86:       **COMPUTATION OF INDUSTRIAL WASTE SERVICE CHARGE:** Industrial waste service charges shall be based upon flow, biochemical oxygen demand (BOD), suspended solids (SS) and other reasonable factors that affect the cost of providing treatment services. (Ord. 2223, 1-9-97)

8-1-87:       **TRANSITION RATES FOR INDUSTRIAL USERS:** Transition rates for industrial Users may be established by annual resolution of the City Council, based upon the cost-of-service rate methodology set forth in the 1998 Rate Study prepared by CH2M Hill. Such rates shall be designed to transition over a period of not to exceed four (4) years, beginning in the year 2000. Transition to cost-of-service rates may occur at a different pace for each industrial User, depending upon the hardship associated with necessary adjustments towards cost-of-service based rates. (Ord. 2357, 12-22-99; Ord.) 2684, 12-14-06)

8-1-88:       (Repealed)

8-1-89:       **WOODRUFF AVENUE INTERCEPTOR:** In addition to the unit charges established pursuant to Sections 8-1-85 through 8-1-87, any future industry located such that industrial waste is discharged into the Woodruff Avenue Interceptor at a point north of the intersection of Ninth Street and St. Clair Road, will be required to repay their share of the EPA grant for the Woodruff Avenue Interceptor. The required pay back shall be in accordance with public law 92-500 of the Laws of the United States of America and all regulations and guidelines pertaining thereto. (Ord. 2358, 1-13-00)

8-1-90:       **GREASE INTERCEPTOR:** Whenever a building is used as a food service establishment or commercial kitchen, the owner or occupant shall provide a grease interceptor or a grease trap through which all waste containing fats, oils or grease shall be drained. Such interceptor or trap shall be designed and sized as outlined in Appendix H of the currently adopted edition of the Uniform Plumbing Code, and shall only allow wastewater, which complies with this Chapter to be drained into the sanitary sewer system.

**EXCEPTION:** The requirements of Appendix H shall not apply when, in the judgment of the Director, or his nominee, the kitchen discharge does not contain or exceed the fats, oils and grease limitations as outlined in the Local Limits, Section 8-1-12 of this Chapter. (Ord. 2223, 1-9-97); (Ord. 2609, 7-28-05; Ord. 2684, 12-14-06)

8-1-91:       **INTERCEPTORS REQUIRED TO REMOVE HARMFUL INGREDIENTS:** Grease, oil and sand interceptors or other adequate removal facilities shall be installed on the premises necessary to remove grease in excessive amounts, high concentration of blood, fruit, vegetable or grain liquors, milk wastes, or any flammable wastes, sand and other harmful ingredients. All interceptors shall be of a type and capacity approved by the Director and shall be so located as to be readily and easily accessible for cleaning and inspection. All interceptors shall be properly and regularly maintained by the owner or occupant. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-92:       **SEPTIC TANK WASTES:**

(A) No person or entity shall haul septic tank waste for commercial purposes or discharge septic tank waste from any portable tank or storage container into the POTW unless such person or entity has a permit issued by the Director. Such permit shall be issued for a period of one (1) year and may be issued only upon submission of an application to the Director in such form as may be determined appropriate by the Director. The license fee for such permit shall be in an amount set from time to time by Resolution of the Council. Such permit shall be specific to the permittee and may not be sold or transferred to any other person or entity. The applicant shall, as part of the application, submit a list of all vehicles to be used for the purpose of hauling, transporting or discharging septic tank waste into the POTW and the permittee shall not use any vehicle or storage container not contained or included within such list.

(B) Septic tank waste may be introduced into the POTW only at a designated receiving structure within the treatment plant area, and at such times as are established by the Director. Such wastes shall consist of domestic sewage only, must meet or exceed the local limits and shall not otherwise violate any provisions of this Chapter. In no event shall any permittee haul, transport or otherwise discharge into the POTW any hazardous waste as defined by RCRA.

(C) Septic tank waste haulers must deliver to the Director a waste tracking form for every load of septic tank waste discharged into the POTW.

(D) Septic tank waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the waste hauler, permit number, truck identification, sources of waste, and volume and characteristics of waste.

(E) Fees for dumping hauled wastes will be established as part of the User fee system as authorized in Section 8-1-100 of this Chapter. (Ord. 2684, 12-14-06; Ord. 2964, 8-14-14)

8-1-93: (Repealed)

8-1-94: CLASSIFICATION OF USERS: For billing purposes, sewer users shall be classified and billed as follows:

(A) Residential

(B) Commercial

(C) Industrial (Ord. 2357, 12-22-99)

8-1-95: DOMESTIC AND COMMERCIAL RATES OUTSIDE THE CITY: All charges for operation and maintenance shall be uniform for all domestic or commercial Users, whether said Users are located within or without the City. (Ord. 2223, 1-9-97)

8-1-96: BILLING PERIODS: All regular billing periods shall be on a monthly basis, but domestic or commercial premises occupied for a period of less than one month shall be charged only for the number of days wastewater treatment services were available for use. (Ord. 2223, 1-9-97)

8-1-97: BILLING PROCEDURE: Accounts receiving metered water service shall be charged for sewer service based upon metered water and such charges may be included in the metered water billing. All other sewer charges may be included with billings for other City services. (Ord. 2223, 1-9-97)

8-1-98: DUE DATE: Bills rendered for sewer service are payable upon receipt and become past due ten (10) days from the date on which rendered. When the past due date falls on a legal holiday or on a day when City offices are not open for business, the next regular business day is considered the past due date. When remittances are made by mail, bills shall be deemed paid on the date of mailing as shown by the postmark. Any account not paid by the past due date shall bear interest at the maximum rate permitted by law, commencing upon the past due date. (Ord. 2223, 1-9-97) (Ord. 2458, 9-12-02)

8-1-99: DELINQUENT ACCOUNTS: When bills are not paid within fifty (50) days from the past due date, a service charge in an amount set from time to time by Resolution of the Council shall be added to the bill and the City may discontinue water or electric utility service to such delinquent customers in the manner set forth in Section 8-5-17, City Code. If the customer is receiving a unified utility billing for water, sewer, electric or sanitation services, the maximum service charge shall be set in an amount from time to time by Resolution of the Council. If water or electric service is discontinued for delinquency, such services shall not be restored until the delinquency is paid, or arrangements for payment satisfactory to the City are made, and the customer has paid an additional fee in an amount set from time to time by Resolution of the Council for discontinuing and restoring service. A fee set in an amount from time to time by Resolution of the Council shall be payable whenever a service call is made for the purpose of disconnection for nonpayment, even though an actual disconnect may not occur. In the event the Industrial Users fail to have flow or sampling devices in proper operating condition for more than one week, the Director may discontinue City water service or remove or close sewer connections, and enter upon the property for accomplishing such purposes. The expense of such discontinuance, removal or closing, as well as the expense of restoring service, is a debt due to the City and may be recovered by legal action against the discharger or by any other remedy or method permitted by this Chapter. (Ord. 2223, 1-9-97; Ord. 2458, 9-12-02; Ord. 2964, 8-14-14)

8-1-100: PRETREATMENT CHARGES AND FEES: The City may adopt reasonable fees for reimbursement of costs of setting up and operating the City's pretreatment program which may include:

(A) Fees for wastewater discharge permit applications including the cost of processing such applications;

(B) Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing a User's discharge, and reviewing monitoring reports submitted by Users;

(C) Fees for reviewing and responding to accidental discharge procedures and construction;

(D) Fees for filing appeals; and

(E) Other fees as the City may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this Chapter and are separate from all other fees, fines, and penalties chargeable by the City. (Ord. 2684, 12-14-06)

8-1-101: RECOVERY OF COSTS BY CITY: Any person who knowingly makes any false statement, representation, or certification in any application, record, report and plan or other document filed or required to be maintained pursuant to this Chapter, or who falsified, tampers with, or knowingly renders inaccurate any monitoring device or method required under this Chapter shall be guilty of a misdemeanor. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-102: FALSIFYING INFORMATION: Nothing herein is intended to create any private duty to any customer or discharger or create any private right of action on account of any failure by the City, or its officers, employees or agents to perform any duty or obligation set forth herein. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06)

8-1-103: LIMITATION OF LIABILITY: Any person who violates this Chapter is guilty of a misdemeanor. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06; Ord. 2964, 8-14-14)

8-1-104: PENALTY: Any person who violates this Chapter is guilty of a misdemeanor. (Ord. 2223, 1-9-97; Ord. 2684, 12-14-06; Ord. 2964, 8-14-14)

## **CHAPTER 2**

### **AIRPORT REGULATIONS AND FEES**

#### **SECTION:**

- 8-2-1: Commercial Operations
- 8-2-2: Commercial Aircraft
- 8-2-3: Landing Fees - Commercial Aircraft
- 8-2-4: Rules and Regulations
- 8-2-5: Purpose of Fuel Flowage Fees
- 8-2-6: Definitions
- 8-2-7: Assessment of Fuel Flowage Fee
- 8-2-8: Collection of Fuel Flowage Fee
- 8-2-9: Failure to Collect Fuel Flowage Fee
- 8-2-10: Fuel Flowage Fees Fund
- 8-2-11: Disbursement of Funds

8-2-1: **COMMERCIAL OPERATIONS:** Any person who conducts any commercial operation from or upon the Idaho Falls Regional Airport, without having entered into a written lease or contract with the City, is guilty of a misdemeanor. The Council may by resolution adopted in accordance with Section 8-2-4 of this Chapter, establish regulations defining a "commercial operation" for the purposes of this Section. (Ord. 3003, 04-23-15)

8-2-2: **COMMERCIAL AIRCRAFT:** Any person who operates any aircraft for commercial purposes, from the Idaho Falls Regional Airport without having obtained a permit therefor from the City, is guilty of a misdemeanor. The Council may by resolution adopted in accordance with Section 8-2-4 of this Chapter establish regulations defining the term "commercial purposes" as used in this Section. (Ord. 3003, 04-23-15)

8-2-3: **LANDING FEES - COMMERCIAL AIRCRAFT:** Any person who operates an aircraft for commercial purposes and who lands the aircraft at the Idaho Falls Regional Airport shall be charged a landing fee in an amount set from time to time by Resolution of the Council for each aircraft landing. Any person who fails to pay such fee prior to takeoff or within twenty-four (24) hours after landing, whichever is sooner, shall be guilty of a misdemeanor, provided, however, any person regularly operating an aircraft for commercial purposes may enter into a contract with the City to pay such fees on a monthly basis, notwithstanding the time frames set forth herein. Each person obligated to pay a landing fee on a monthly basis shall deliver a certified report of the amount of the fees due the preceding month at the time the fees are paid. (Ord. 2346, 9-9-99; Ord. 2964, 8-14-14; Ord. 3003, 04-23-15)

8-2-4: **RULES AND REGULATIONS:** The Council may adopt reasonable operational rules and regulations for the operation of aircraft from the Airport, which rules and regulations shall be continuously posted in a conspicuous place at the Airport. Such regulations shall also be published in pamphlet form and shall be distributed free of charge to all persons requesting the same.



8-2-5: PURPOSE OF FUEL FLOWAGE FEES: The City Council finds and declares as follows:

(A) The City provides and maintains runways, taxiways, ramps, lights and runway lighting systems at the Airport and such services as runway, taxiway and lamp snow removal for all aircraft operating to or from, or otherwise using, the Idaho Falls Regional Airport, which facilities and services are funded in part by ad valorem property taxes, and

(B) Commercial aircraft operating to or from, or otherwise using, the Airport currently pay landing fees that defray a portion of the cost of providing such facilities, and

(C) General aviation aircraft currently use or benefit from such facilities and services, but do not pay landing fees;

(D) It is inequitable to fund the entire cost of providing and maintaining such facilities and services solely from revenues derived from ad valorem property taxes and commercial landing fees, and

(E) The need for such facilities and services and the cost of providing and maintaining the same are proportional to the size of the aircraft using the Airport and the frequency with which such aircraft use the Airport, and

(F) The fuel requirements of aircraft using the Airport are also proportional to the size of such aircraft and the frequency with which they use the Airport, and

(G) General aviation aircraft operating to or from, or otherwise using, the Airport require and use facilities and services provided and maintained by the City and such general aviation aircraft should therefor pay a portion of the cost thereof, and

(H) The City has the authority pursuant to Idaho Code Section 63-2201A to impose and cause to be collected fees for services which would otherwise be funded by ad valorem tax revenues. (Ord. 3003, 04-23-15)

8-2-6: DEFINITIONS: The following words and phrases shall have the meaning defined herein:

AIRPORT: The Idaho Falls Regional Airport (or “IFRA” or the “Airport” and formally known as “Fanning Field” or “Idaho Falls Municipal Airport”.)

COMMERCIAL AIRCRAFT: All commercially-owned aircraft which operate to or from or otherwise use, the Airport under contract with the City pursuant to which they pay commercial landing fees for their use of the Airport.

GENERAL AVIATION AIRCRAFT: All aircraft of any kind or nature which operate to or from, or otherwise use, the Airport, other than commercial aircraft.

8-2-7:       ASSESSMENT OF FUEL FLOWAGE FEE: A fuel flowage fee shall be assessed upon each general aviation aircraft operating to or from, or otherwise using, the Airport and into which aviation fuel is dispensed at the Airport. The amount of the fuel flowage fee shall be in an amount as set from time to time by Resolution of the Council. (Ord. 2346, 9-9-99; Ord. 2964, 8-14-14)

8-2-8:       COLLECTION OF FUEL FLOWAGE FEE: The fuel flowage fee shall be paid by the owner or operator of the aircraft into which the aviation fuel is dispensed at the time the fuel is dispensed and shall be collected by the fixed base operator or other person or entity dispensing the fuel. Fixed base operators or any other persons or entities who collect fuel flowage fees shall remit within five (5) days after the end of each calendar month all fuel flowage fees collected during said month to the Director of the Airport . All fixed base operators or other persons or entities dispensing fuel at the Airport shall, within five (5) days after the end of each calendar month, furnish to the Director a statement indicating the total number of gallons of fuel dispensed during the month to all aircraft, the total number of gallons of fuel dispensed to general aviation aircraft and the total amount of fuel flowage fees collected. (Ord. 3003, 04-23-15)

8-2-9:       FAILURE TO COLLECT FUEL FLOWAGE FEE: It is unlawful for any person or entity to:

(A)   Dispense any aviation fuel to any general aviation aircraft upon the Airport without collecting the fuel flowage fee assessed by this Chapter;

(B)   Fail to remit the fuel flowage fees to the Director of the Airport as required by this Chapter;

(C)   Fail to deposit amounts collected as fuel flowage fees in a separate bank account within two (2) business days following the date of the collection thereof;

(D)   Commingle any amounts collected as fuel flowage fees with any other moneys or accounts of the person or entity collecting such fees;

(E)   Use, apply or divert any amounts collected as fuel flowage fees with any other moneys or accounts of the person or entity collecting such fees;

(F)   Fail to keep complete, accurate and truthful records which show the amount of aviation fuel sold at or upon the Airport, the amount of aviation fuel dispensed to general aviation aircraft and the amounts collected as fuel flowage fees, or to refuse to permit any authorized representatives of the City to inspect such records upon request during the normal hours of business operation;

(G)   Submit to the Director of the Airport any report or statement regarding fuel flowage fees with knowledge the same is inaccurate, incomplete or untruthful. (Ord. 3003, 04-23-15)

8-2-10: FUEL FLOWAGE FEES FUND: A Fuel Flowage Fees Fund is hereby established into which shall be deposited all revenues derived from the payment of fuel flowage fees pursuant to this Chapter. All revenues deposited into the Fuel Flowage Fees Fund shall be disbursed only for the purposes set forth in Section 8-2-11 of this Chapter, when authorized by the City Council.

8-2-11: DISBURSEMENT OF FUNDS: Disbursement may be made from the Fuel Flowage Fees Fund only for the following purposes:

(A) The improvement and maintenance of all runways, taxiways, ramps, lights and runway lighting systems at the Airport; and

(B) Removal of snow and ice from the runways, taxiways and ramps at the Airport; and

(C) The construction, improvement and maintenance of such other facilities and such other facilities and other services at the Airport as are deemed by the City Council to be necessary for the operation of aircraft to and from the Airport and which are of direct benefit to general aviation aircraft.

## **CHAPTER 3**

### **PARKS**

#### **SECTION:**

- 8-3-1: Operation of Concession
- 8-3-2: Amusements
- 8-3-3: Planting or Removal of Shrubs
- 8-3-4: Alcoholic Beverages in Parks Prohibited
- 8-3-5: Unauthorized Application of Chemicals

8-3-1:       **OPERATION OF CONCESSION:** No person shall sell or offer for sale any food, beverage, candy or goods of any kind, within a public park, except for persons operating under a concession agreement approved by the Council or except for persons operating at a special event as determined by the Director of Parks and Recreation for which specific approval of limited duration has been given by said Director. (Ord. 2187, 10-12-95)

8-3-2:       **AMUSEMENTS:** No person shall operate or cause to be operated any amusement ride, device, mechanical or electronic game or machine, carnival, show or exhibit of any kind, for pecuniary gain in any public park, except persons operating under a concession or lease agreement approved by the Council.

8-3-3:       **PLANTING OR REMOVAL OF SHRUBS:** No trees, shrubs or vines shall be planted in the parks of the City, nor shall any trees, shrubs or vines be cut down or removed therefrom, without the consent of the Director of Parks and Recreation.

8-3-4:       **ALCOHOLIC BEVERAGES IN PARKS PROHIBITED:**

(A)       The terms defined below shall have the following meanings when used in this section:

**ALCOHOLIC BEVERAGE:** Beer, wine or liquor.

**BEER:** Any beverage obtained by the alcoholic fermentation of an infusion or decoction of barley, malt or other ingredients in drinkable water and which contains not more than four percent (4%) alcohol by weight.

**LIQUOR:** All kinds of liquor sold by and in a state liquor store of the State of Idaho.

**STATE LIQUOR STORE:** Any liquor store or distributor established under and pursuant to the laws of the State of Idaho for the package sale of liquor at retail.

**WINE:** Any beverage containing not more than fourteen percent (14%) alcohol by volume obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar whether or not other ingredients are added.

(B) Any person who possesses any alcoholic beverage while in any public park, outdoor recreation area or facility or any public parking lot adjacent thereto, is guilty of a misdemeanor.

(C) Notwithstanding section (B) hereof, beer may be possessed and consumed in any public park within the premises designated for any person holding a retail beer or wine license to sell or dispense beer or wine within such park. The boundaries of such premises shall be conspicuously posted by such licensee or by the City upon or near such premises. Nothing in this Section shall prohibit such retail licensee or his agents, employees or suppliers from transporting beer or wine to the premises for sale or disposition. (Ord. 2148, 8-4-94; Ord. 2650, 06-08-06)

8-3-5: UNAUTHORIZED APPLICATION OF CHEMICALS: No person shall, without proper authority, apply any chemical to any lawn, shrub, tree or ornamental plant located within any public park, including, without limitation, the unauthorized application of a chemical for the purpose of collecting worms. (Ord. 2187, 10-12-95)

## **CHAPTER 4**

### **WATER SERVICE**

#### **SECTION:**

- 8-4-1: Purpose
- 8-4-2: Definitions
- 8-4-3: City to Have Exclusive Management and Control
- 8-4-4: Granting of Franchise Prohibited
- 8-4-5: City Not Liable for Damages
- 8-4-6: Duties of Superintendent
- 8-4-7: Right to Turn Off Water
- 8-4-8: Waste Prohibited
- 8-4-9: Mayor May Limit Use of Water
- 8-4-10: Inspection of Premises
- 8-4-11: Permits and Service Connection Fees
- 8-4-12: Extension of Water Mains Within City
- 8-4-13: Extension of Water Mains Outside City
- 8-4-14: Water System Connection Fees
- 8-4-15: Water Line Capital Improvement Fund
- 8-4-16: Disbursement of Funds
- 8-4-17: Installation Charges
- 8-4-18: Length of Service
- 8-4-19: Installation and Maintenance
- 8-4-20: Arrangement of Service Pipes
- 8-4-21: Branch Service
- 8-4-22: Permit Required
- 8-4-23: Customer Line Maintenance
- 8-4-24: Permit to do Plumbing
- 8-4-25: Service Call Charge
- 8-4-26: Tampering Unlawful
- 8-4-27: Authority to Place Meter
- 8-4-28: Ownership of Meters
- 8-4-29: Maintenance of Meters
- 8-4-30: Meters; Location and Access
- 8-4-31: Billing Periods
- 8-4-32: Billing Procedures
- 8-4-33: Due Date
- 8-4-34: Delinquent Accounts
- 8-4-35: City Treasurer to Furnish Statements
- 8-4-36: Water Rates, Fees
- 8-4-37: Water Rates Outside City
- 8-4-38: Meter Rates for Multiple Meters
- 8-4-39: Service Outside City
- 8-4-40: Fire Service Connection
- 8-4-41: Fire Hydrants

- 8-4-42: Unlawful Contamination or Cross-Connections
- 8-4-43: Backflow Prevention Devices
- 8-4-44: Inspection of New Construction
- 8-4-45: Inspection of Existing Buildings, Structures or Improvements and Termination of Water Supply

8-4-1: PURPOSE: The purpose of this Chapter is to:

(A) Establish reasonable rules and regulations for the operation of the Water Division of the City.

(B) To establish reasonable fees to be charged to customers receiving water service and provide fair, orderly and efficient procedures for collection and termination of delinquent accounts.

(C) To establish a fair and equitable means of having persons who hook into and receive a direct and immediate benefit from existing water mains by requiring them to participate in the capital cost of water mains fronting upon their property and which have been constructed at taxpayer expense or from revenues derived from the operation of the water system.

(D) To establish a fair and equitable charge for the actual cost of materials and labor expended by the City whenever City crews install water service for a customer.

(E) To protect the public health and welfare by controlling cross-connections or other sources or potential sources of contamination to the City water supply.

(F) To provide a clean, efficient and adequate water system for the residents of the City. (Ord. 3003, 04-23-15)

8-4-2: DEFINITIONS: Certain terms used in this Chapter shall have the meanings ascribed below:

**APARTMENT:** A structure in which two or more separate units are constructed and designed so the occupants share common dining or restroom facilities and for which the occupants pay rent or other consideration.

**BACKFLOW:** The flow other than in the intended direction of flow, of any non-potable waters, foreign liquids, gases or harmful or offensive substances into the City water supply as a result of reduced or reversed pressure.

**BACKFLOW PREVENTION DEVICE:** A device which, when properly installed between the City water supply system and the terminus of the customer's water line or point of ultimate use, will prevent backflow.

**CITY:** The City of Idaho Falls, Idaho.

**CROSS-CONNECTION:** Any physical arrangement whereby the City water system is connected with any other water supply system, sewer, drain, conduit, pool, storage reservoir or any other source of water supply which contains or may contain contaminated water, sewage or other waste or liquids which may be harmful to human health or which may deleteriously affect the City water supply.

**CURB STOP:** The service line valve owned by the City and located near the customer's property line.

**CUSTOMER LINE:** The pipe, valves and fittings leading from the curb stop into the premises served, including the water meter attached thereto.

**METER:** A water meter and its enclosure, valve and related appurtenances.

**OPEN HOSE:** The use of water through a hose without a nozzle or other pressure limiting device.

**SERVICE LINE:** The water pipe, valves and fittings laid from the main to the curb stop.

**SINGLE FAMILY DWELLING:** All structures, except hotels, motels, rooming houses and apartments, which contain sleeping, restroom, cooking and dining facilities.

**WATER MAIN:** The publicly-owned water pipe laid in a street, road, alley or easement.

8-4-3: **EXCLUSIVE MANAGEMENT AND CONTROL:** The City shall have exclusive control and management of the City water system and shall have exclusive management and control of the supply and distribution of water to the inhabitants thereof. The City may make such rules and regulations as are necessary for the complete management, control, distribution and supply of water within and without the City.

8-4-4: **GRANTING OF FRANCHISE PROHIBITED:** No person shall be granted any franchise or permit to furnish or supply any inhabitant within the City any water for domestic or culinary use or for sprinkling of lawns and gardens within any portion thereof where the water mains have been extended or may hereafter be extended so as to supply said property with water.

8-4-5: **CITY NOT LIABLE FOR DAMAGES:** The City shall not be liable for damages caused by interruptions of water supply, scarcity of water, accidents to water works or mains or during the time of alterations, additions or repairs or for any other unavoidable causes. Nothing herein is intended to create any private duty to any customer or create a private right of action against the City, on account of any failure by the City or its officers, agents or employees, to provide water service or comply with the provisions of this Chapter.

8-4-6: **DUTIES OF SUPERINTENDENT:** The Superintendent of the Water Division under the direction of the Director of Public Works shall supervise and manage the Water



Division including all supply and distribution lines, wells, pumps, and fire hydrant facilities. (Ord. 3003, 04-23-15)

8-4-7:       **RIGHT TO TURN OFF WATER:** The Superintendent of the Water Division may turn off water within the City water system when deemed necessary to maintain or repair the water system or when ordered to do so by the Mayor or Council. (Ord. 3003, 04-23-15)

8-4-8:       **WASTE PROHIBITED:** It shall be unlawful for any water user to waste water or allow it to be wasted by improper use or by faulty facilities. Irrigation by open hoses is prohibited.

8-4-9:       **MAYOR MAY LIMIT USE OF WATER:** In times of, or in anticipation of, scarcity of water, or when the Water Division is unable to furnish a sufficient supply of water, the Mayor may, by public proclamation limit the use of water to such extent as may be necessary for the public good. Such proclamation shall be published in two (2) consecutive issues of the official newspaper, and after such publication, the proclamation shall have the same force and effect as a City ordinance. (Ord. 3003, 04-23-15)

8-4-10:       **INSPECTION OF PREMISES:** Free access for inspection shall, upon such reasonable notice as the circumstances permit, be allowed to the Superintendent of the Water Division or to any other authorized person to all places supplied with water from the City water system. (Ord. 3003, 04-23-15)

8-4-11:       **PERMITS AND SERVICE CONNECTION FEES:** It shall be unlawful to install, alter or connect any water service within the City to any water line within the City without first obtaining a permit from the City and paying the service connection fees set forth in this Chapter.

8-4-12:       **EXTENSION OF WATER MAINS WITHIN CITY:** The Water Division or the Council may extend water mains within the City at City's expense whenever, in their sole discretion, such extension is necessary for the health, welfare or safety of the residents of the City, provided however nothing herein shall require that such extension be made at City expense. The City may require any customer desiring water service to install at the customer's expense a water main along the entire frontage of such customer's property. The City may also require the customer to submit design drawings and specifications prior to the commencement of the construction of such extension. (Ord. 3003, 04-23-15)

8-4-13:       **EXTENSION OF WATER MAINS OUTSIDE CITY:** Water mains shall not, without the approval of the Council be extended outside the corporate limits of the City, unless adequate excess water is available for such service. Such agreements shall specifically reserve the right to terminate such service without cause at any time upon at least thirty (30) days advance written notice.

8-4-14:       **WATER SYSTEM CONNECTION FEES:**

(A)    **Purpose.** The purpose of this Section is to establish an equitable system of charging new customers for the impact or burden created whenever they enlarge an existing

water service or connect a new water service to the existing wells, storage tanks, pumps, outbuildings and appurtenances of the City water system, all of which were funded from revenues of the City water system or paid with revenues derived from ad valorem taxes. The City recognizes the inherent inequity of requiring existing customers or taxpayers to bear the entire cost of acquiring or building new facilities, or of utilizing excess capacity with existing facilities, in order to meet the needs of such new development. The Council hereby finds and recognizes the relationship between the nature of the uses of property and the impact thereof upon the City water system. The Council also finds that customers who connect to a water main located adjacent to their property receive a direct benefit from such water mains, which benefit is directly proportional to the frontage of the water main along their property. The Council further finds that it is fair and equitable to charge a main connection fee for customers who connect to such mains in order to fund a portion of the cost incurred by the City in installing such mains.

(B) Water System Connection Fees. A water system connection fee shall be collected from any person requesting connection to the water system for any new building or structure or for any existing building for which a change in occupancy or use, as defined under Section 3406.0 of the International Building Code, 2006 Edition, is made and for which a new or larger water service line is installed. Notwithstanding the foregoing, no system connection fee shall be charged for connection of water service solely for fire protection services. Such system connection fee shall be in an amount set from time to time by Resolution of the Council.

(C) Water Main Connection Charge. Before connecting to any water main constructed in whole or in part at City expense, all persons desiring such connection shall pay a water main connection fee in an amount set from time to time by Resolution of the Council per front foot of property owned by such person and fronting upon a street or public right of way within which a water main is located. Such fee shall be in addition to the water system connection fee set forth above. Despite the foregoing, if any person requests annexation to the City and as part of such annexation also requests connection to such water main, then the fee shall be due in full at the time such property is annexed to the City. If any such property is located upon a corner or is bounded by two or more streets in which a water main is located, the calculation for the fee shall be based upon the frontage of the longest street in which a water main is located. All water mains within the City shall be deemed to have been constructed in whole or in part at City expense, unless the applicant presents written evidence conclusively demonstrating such main was constructed entirely from private monies or was constructed entirely with funds from a state or federal grant. If any person constructs a water main entirely at his or her expense, the City may, by written agreement, pay over to such person all water main connection fees collected by the City from any other person who subsequently connects to such water main. (Ord. 2753, 5-22-08; Ord. 2964, 8-14-14)

8-4-15: WATER LINE CAPITAL IMPROVEMENT FUND: A Water System Capital Improvement Fund is hereby established into which all revenues derived from water connection fees as set forth in this Chapter shall be deposited. Expenditures from this fund shall be made only for the purposes set forth in Section 8-4-16 of this Chapter when authorized by the City Council.

8-4-16:       **DISBURSEMENTS OF FUNDS:** Disbursements may be made from the Water System Capital Improvement Fund for the following purposes only:

- (A)     Construction and installation of City water wells.
- (B)     Construction, installation and extension of City water mains, including costs of construction of mains with extra capacity.
- (C)     Payment of principal and interest on any revenue bond or bonds issued by the City to defray the cost of construction, extension or betterment of the City water or sewer systems.
- (D)     Reimbursement of water main connection fees to any developer who has constructed that portion of a water main for which a water main connection fee has been charged by the City.

8-4-17:       **INSTALLATION CHARGES:** Water service lines between the main line and the curb stop may be installed by the City or by a private contractor hired by the customer. Whenever a water service line is installed by the City, a charge, in an amount set from time to time by Resolution of the Council, for labor and materials shall be made for the costs of installation.

Additional fees, in an amount set from time to time by Resolution of the Council, may be included for the costs related to blasting or unusual rock removal. The necessary and reasonable costs for such services shall be added to the charge to the customer. (Ord. 2267, 3-12-98; Ord. 2964, 8-14-14)

8-4-18:       **LENGTH OF SERVICE:** Where a water main is located in a public right of way, the maximum length of service line furnished and installed by the City for the standard installation fee set forth above shall be fifty feet (50'). Where the main is on private property, the maximum length of service line furnished and installed by the City for the standard installation fee shall be thirty feet (30'). If the length of the service line exceeds the maximums stated above, an additional charge shall be made, based on the actual cost to the City to furnish and install the extra pipe.

8-4-19:       **INSTALLATION AND MAINTENANCE:** All service lines and connections from the main to and including the curb stop shall be installed, maintained, owned and exclusively controlled by the Water Division. (Ord. 3003, 04-23-15)

8-4-20:       **ARRANGEMENT OF SERVICE PIPES:** The service lines must be so arranged that the water supply to each building, place of business or tract of land shall be controlled by a separate curb stop placed near the property line, unless permission for a different arrangement is first authorized in writing by the Water Division. (Ord. 3003, 04-23-15)

8-4-21:        **BRANCH SERVICE:** No service connection serving more than one customer shall be made. Where an existing water service provides service to several customers, the City may terminate water service until a separate service is provided at the owner's expense. If the City does not terminate service to such existing services, the established rate shall be charged for each customer receiving service from the existing line.

8-4-22:        **PERMIT REQUIRED:** No person shall dig into the streets or under the sidewalk for the purpose of laying, removing or repairing any water line without first obtaining a permit issued in accordance with Chapter 7 of this title.

8-4-23:        **CUSTOMER LINE MAINTENANCE:** All water users shall at their own expense keep their customer lines, connections and other apparatus in good repair and in a condition that avoids waste of water. Customer water lines that become frozen are the responsibility of the customer, provided the City may unthaw the same and charge the customer for the fair and reasonable costs therefor.

8-4-24:        **PERMIT TO DO PLUMBING:** No plumber or other person shall make any connections to a City main or make alterations in any conduit, pipe or other fixture connecting thereto, or connect pipes where they have been disconnected, or turn water off or on at the curb stop supplying any premises without first obtaining a plumbing permit from the City. If such work requires excavation within a public right of way, such person shall also obtain a permit under Chapter 7 of this title.

8-4-25:        **SERVICE CALL CHARGE:** The Water Division Superintendent may assess and collect a service charge, in an amount not to exceed the actual cost to the City, for service calls which are requested on Saturday or a legal holiday or during a time other than normal working hours and which are only for the convenience and benefit of the customer, or which are necessitated because of plumbing which does not meet the requirements of the Uniform Plumbing Code. (Ord. 3003, 04-23-15)

8-4-26:        **TAMPERING UNLAWFUL:** It shall be unlawful to damage, adjust or tamper with any portion of the City Water System or appurtenances, whether located upon public or private property, without having first obtained the express permission of the City. If any person damages the water system or in any way causes the City to expend extraordinary costs as a result of such unlawful acts, the City may assess and collect the same from the person committing the same, or from the parent or guardian of any minor who commits such acts. Such amounts may be included upon the customer's regular monthly billing statement for water service, and upon the customer's failure or refusal to pay the same, water service may be terminated in accordance with the procedures set forth in this Chapter.

8-4-27:        **AUTHORITY TO PLACE METER:** The Water Superintendent may, in his sole discretion, place a meter on any service line and change the method of billing from a flat rate to a metered rate.

8-4-28:       **OWNERSHIP OF METERS:** All water meters installed by the City shall remain the property of the City and may be removed or replaced by the Water Division at any time. (Ord. 3003, 04-23-15)

8-4-29:       **MAINTENANCE OF METERS:** The Water Division shall maintain and repair all meters. Where replacement, repair or adjustment of any meter is rendered necessary by the act, neglect or carelessness of the owner or occupant of any premises, any expense incurred by the Water Division thereby shall be charged against and collected from the customer, and water service may be discontinued until the meter is repaired, replaced or adjusted. (Ord. 3003, 04-23-15)

8-4-30:       **METERS; LOCATION AND ACCESS:** Meters shall be located near the customer's property line or within the structure served. The customer shall keep the area adjacent to the meter free from trees, shrubbery or other obstructions and shall allow the City access to the meter during normal working hours of any day of the week, except Saturdays and legal holidays.

8-4-31:       **BILLING PERIODS:** All regular billing periods shall be on a monthly basis. Premises occupied for any portion of a month shall be charged the established rate for the entire month.

8-4-32:       **BILLING PROCEDURES:** Metered accounts shall receive a billing separate from accounts billed on a flat monthly rate. Accounts receiving water service but no electric service shall receive separate billing. Non-metered accounts shall be charged a flat rate in accordance with the rate schedule found in Section 8-4-36 of this Chapter.

8-4-33:       **DUE DATE:** Bills rendered for water service are payable upon receipt and become past due ten (10) days from the date on which rendered. When the past due date falls on a Saturday or a legal holiday or on a day when City offices are not open for business, the next regular business day is considered the past due date. Bills shall be deemed paid on the date payment is received by the City. Any account not paid by the past due date shall bear interest at the maximum rate permitted by law, commencing upon the past due date. (Ord. 2458, 9-12-02)

8-4-34:       **DELINQUENT ACCOUNTS:** When bills are not paid within fifty (50) days from the past due date, a service charge in an amount set from time to time by Resolution of the Council shall be added to the bill and the City Treasurer may terminate water service to the delinquent customer in the manner set forth in Section 8-5-17 of this Code. If the customer is receiving a unified utility billing for water, sewer, electric or sanitation services, the maximum unified service charge shall be in an amount set from time to time by Resolution of the Council. If service is terminated for delinquency, it shall not be restored until the delinquency is paid or a written agreement for payment is made and signed by the City Treasurer and the customer has paid an additional disconnect fee in an amount set from time to time by Resolution of the Council. The disconnect fee shall be payable whenever a service trip is made for the purpose of disconnecting water service even though service is not actually disconnected. (Ord. 2458, 9-12-02; Ord. 2964, 8-14-14)

8-4-35:       CITY TREASURER TO FURNISH STATEMENTS: The City Treasurer shall furnish to each property owner, landlord, tenant or agent, a monthly statement of the amount due for water service each month. The failure of any water user to receive a statement shall not excuse or release the customer from his obligation to pay for water service.

8-4-36:       WATER RATES, FEES: The City shall establish monthly rates for water service supplied by the City in an amount set from time to time by Resolution of the Council for the following:

(A)   Non-Metered Rates (Inside City):

Single-family dwellings  
and mobile homes  
(excluding  
separate apartment units  
within such dwelling), per  
dwelling or unit;  
Apartment unit – per unit;  
Apartment unit occupied  
by landlord or manager;  
Office buildings, banks,  
bowling alleys, lodges,  
markets  
Per 1,000 square feet of  
area;  
Laundromat – per  
machine;  
Travel trailer court;  
Plus per occupied space;  
Barber or beauty shop,  
each bowl;  
Hotel, motor hotel, motel  
or rooming house – per  
room;  
Restaurant and fast-food  
establishment;  
Elementary Schools  
(Grades 1-6) – Per 50  
students or  
fraction thereof;  
Secondary Schools  
(Grades 7-12) – Per 50  
students or  
fraction thereof; and  
All other non-metered

customers – per premises  
or building

(B) Irrigation Service. In addition to the regular monthly charges for use of City water, the City shall establish annual rates, set from time to time by Resolution of the Council, for customers using City water for lawn sprinkling or irrigation for the following:

Each customer, landlord,  
tenant or agent; and  
Each non-metered, non-  
residential property with  
lawn or  
cultivated area measuring  
more than 1/20th of an  
acre - per  
acre or fraction thereof

During the third quarter of each calendar year, the City Treasurer shall furnish each property owner, landlord, tenant or agent a statement of the amount due for seasonal sprinkling or irrigation service.

(C) Metered Rates (Inside City). The rate for customers receiving metered water service shall be in an amount set from time to time by Resolution of the Council, subject to a minimum monthly charge in an amount set from time to time by Resolution of the Council:

For 5/8" meter;  
For 3/4" meter;  
For 1" meter;  
For 1-1/4" meter;  
For 1-1/2" meter;  
For 2" meter;  
For 3" meter;  
For 4" meter;  
For 6" meter; and  
For 8" meter

(D) Testing Fee. In addition to the monthly rates, each customer shall pay an annual Environmental Quality Assessment Fee in an amount set from time to time by Resolution of the Council per connection to the City water system. Such fee shall be billed by the City Treasurer during the third quarter of each calendar year. (Ord. 2964, 8-14-14)

8-4-37: WATER RATES OUTSIDE CITY: Monthly rates charged for water furnished outside the City limits, whether metered or non-metered, shall be twice the rates charged for water furnished inside the City limits, including minimums.

8-4-38:        **METER RATES FOR MULTIPLE METERS:** Where an individual consumer is supplied with water through more than one metered service, charges shall be computed separately for each individual meter.

8-4-39:        **SERVICE OUTSIDE CITY:** The Water Superintendent shall not provide any water service to any consumer whose residence or place of business is outside the corporate limits of the City unless a written service contract has been executed between the consumer and the City.

8-4-40:        **FIRE SERVICE CONNECTION:**

(A)      All fire service connections between water mains and property lines shall be installed and maintained by the Water Division, at the expense of the owner or occupant of the premises served, and shall be the property of the City. At the time of making application for service the applicant shall file with the Water Division detailed plans showing all piping installed or to be installed for fire protection, all fire gates, automatic sprinklers and all other outlets, gates or appurtenances. Each fire service connection shall have a gate valve with an adequate valve box installed between the main and the property line of the premises served. No fire service connection larger than six inches (6") shall be installed without special permission from the Council. Upon receipt of such application, the Water Superintendent shall determine the cost for the installation of such service, taking into consideration the length and size of pipe, condition of street and sidewalk, all relative to the character of service, and such cost shall be paid by the applicant before such installation is made. No customer receiving metered water service shall use a fire service connection for domestic purposes or any purpose other than for fire protection. If the water superintendent finds a fire connection is being used for any purpose other than for fire protection upon the premises, the owner or occupant shall be notified and if such improper conditions are not corrected within ten (10) days, water service to the entire premises may be shut off until proper adjustments are made.

(B)      All fire service connections shall conform to the requirements of this Section and Section 8-4-41 hereof. However if a customer requests the use of one service line for both the culinary and fire protection connections, he or she shall submit drawings or specifications which identifies the line sizes for each culinary or fire service connection to each site for which the connection is requested. (Ord. 3003, 04-23-15)

8-4-41:        **FIRE HYDRANTS:** All public fire hydrants shall be maintained by the Water Division. Members of the Public Works, Police and Fire Departments shall have free access to such hydrants. No other person shall draw or attempt to draw any water from a fire hydrant unless he has the written permission from one of the directors of such departments. The Water Superintendent may assess an equitable charge for the consumption or use of water drawn from a fire hydrant. (Ord. 3003, 04-23-15)

8-4-42:        **UNLAWFUL CONTAMINATION OR CROSS-CONNECTIONS:** It shall be unlawful for the owner, tenant, occupant, lessee or other user of City water to introduce or permit the introduction of pollution or contamination of any kind into the City water supply system. It shall be unlawful for any person to install or maintain any cross-connection within the City.



8-4-43: BACKFLOW PREVENTION DEVICES:

(A) Backflow prevention devices shall be installed by the proper owner, tenant, occupant, lessee or other user of City water where the nature and extent of the activities conducted or the materials used or stored on the premises would present a hazard to the public health or be deleterious to the quality of the City water supply should a cross-connection occur. Even though cross-connections may not exist at the time, backflow prevention devices shall be installed under circumstances including, but not limited to the following:

- (1) Premises having an auxiliary water supply;
- (2) Premises having internal cross-connections that are not correctable, or having intricate plumbing arrangements which make it impracticable to ascertain whether or not cross-connections exist;
- (3) Premises where entry is restricted so that inspections for cross-connections cannot reasonably be made;
- (4) Premises having a history of cross-connections being established or re-established;
- (5) Premises on which any substance is handled under pressure so as to permit the entry of substance into the public water supply;
- (6) Premises having pumps or devices which may affect the pressure within any line connected to the City water supply.
- (7) Whenever water is drawn from a public fire hydrant.

(B) All backflow prevention devices shall be installed by the property owner at his expense, and shall be of a type commensurate with the degree of hazard which exists or which could exist. An air-gap separation or a reduced pressure principle backflow prevention device shall be installed where the public water supply may be contaminated with sewage, industrial waste of a toxic nature, or other contaminant which could cause a public health hazard. In all other cases where the contaminant may be objectionable but not hazardous to the public health, a double check valve assembly, an air-gap separation, or a reduced pressure principle backflow prevention device shall be installed. All backflow prevention devices and the installation thereof shall be approved by the City Water Superintendent or his duly authorized representative.

(C) All backflow prevention devices installed pursuant to this Chapter, except atmospheric vacuum breakers, shall be inspected and tested by a certified tester at the time of initial installation and annually thereafter, or more often if deemed necessary by the City. Whenever a backflow prevention device is found to be defective, it shall be repaired, overhauled

or replaced at the owner's expense. The City Water Superintendent shall retain adequate records of all inspections, tests or repairs made pursuant to this Chapter.

(D) If a backflow prevention device is found to be necessary, the owner, tenant, occupant or lessee of the property shall apply in writing to the City Clerk for an installation permit, specifying the type and location of such device or devices. It shall be unlawful to install, relocate or remove a backflow prevention device without a permit.

8-4-44: INSPECTION OF NEW CONSTRUCTION: No building, improvement or other structure shall be connected to the City water supply unless such structure has been inspected by the City Water Superintendent or other authorized officer of the City and found free of any cross-connections or other conditions for which a backflow prevention device is required by this Chapter.

8-4-45: INSPECTION OF EXISTING BUILDINGS, STRUCTURES OR IMPROVEMENTS AND TERMINATION OF WATER SUPPLY: Inspections by the City or its authorized agent may be made of any existing buildings, structures or improvements of any nature receiving water from the City supply. The City Water Superintendent or his authorized agent shall make an inspection of any building, improvement or structure of any nature receiving water from the City water supply if there is cause to believe that a cross-connection exists or that a backflow prevention device should be installed pursuant to this Chapter. Whenever a cross connection or other source of contamination to the water supply is found, or it is determined that a backflow prevention device is necessary, the City shall cease delivery of water to such premises and the water supply shall not be resumed until the cross-connection or source of contamination is eliminated or a backflow prevention device has been installed in accordance with this Chapter.

## **CHAPTER 5 ELECTRIC SERVICE**

### **SECTION:**

- 8-5-1: Definitions
  - 8-5-2: Exclusive Right To Sell Electrical Energy; Customer Service Policies
  - 8-5-3: Ownership of Electric Light System
  - 8-5-4: Applicability to Electric Service Customers
  - 8-5-5: Application for Electric Services
  - 8-5-6: Rates and Schedules
  - 8-5-7: Delivery of Service
  - 8-5-8: Voluntary Termination of Services
  - 8-5-9: Limitations of Use
  - 8-5-10: Rights of Way
  - 8-5-11: Meter Service Installations
  - 8-5-12: Measurement of Energy
  - 8-5-13: Failure of and Tampering with Meter
  - 8-5-14: Transformer Losses
  - 8-5-15: Meter Reading
  - 8-5-16: Billings
  - 8-5-17: Termination of Electric Services
  - 8-5-18: Disconnect Fees
  - 8-5-19: Plans for Payment of Delinquent Accounts
  - 8-5-20: Liability for Interruptions of Service
  - 8-5-21: Shut-down for Repairs
  - 8-5-22: Temporary Suspension of Demand
  - 8-5-23: Interference with Service
  - 8-5-24: Protection of Customer's Equipment
  - 8-5-25: Allowable Motor Starting Currents
  - 8-5-26: Maintenance of Industrial Equipment
  - 8-5-27: Security Lighting
  - 8-5-28: Extensions
  - 8-5-29: Underground Residential Distribution
  - 8-5-30: Schedule of Rates
  - 8-5-31: Power Factor Penalty
  - 8-5-32: Selection of Rate Schedules
  - 8-5-33: Transfer From Other Utility
  - 8-5-34: Non-Owner-Occupied Properties
- 8-5-1: DEFINITIONS: Certain terms used in this Chapter shall have the meanings ascribed below:

**CAPACITY:** The average KW supplied the customer during the fifteen (15) minute period of maximum use during the month, as shown on the City meter.

**CONNECTED LOAD:** The combined input rating of the customer's motors and other electric energy-consuming devices.

**CUSTOMER:** Any person receiving electric service at a point of delivery located within the City or for whom electric service is delivered under agreement with any other electric utility.

**ELECTRIC SERVICE:** The availability of power and energy in the form and at the voltage specified in the application for electric service irrespective of whether electric energy is actually utilized.

**HIGH VOLTAGE DELIVERY:** Electric service delivered at two thousand four hundred (2,400) volts or greater.

**LOW VOLTAGE DELIVERY:** Electric service delivered at six hundred (600) volts or less.

**OVERHEAD SERVICE:** Any service supplied directly to the customer from aerially-connected service conductors.

**POINT OF DELIVERY:** The point where the customer's wires are joined to the equipment or facilities of the City unless otherwise specified in the application for electric permit and approved by the Chief Electrical Engineer or his designated agent.

**POWER FACTOR:** The relationship between real and reactive power drawn under actual operating conditions as determined by measurements made by the City.

**PRIMARY DISTRIBUTION LINE:** Any high voltage line two thousand four hundred (2,400) volts or greater normally used to distribute power to service areas of the City.

**SERVICE MONTH:** The period between successive meter readings, generally consisting of approximately thirty (30) consecutive days.

**UNDERGROUND SERVICE:** Any service supplied directly to the customer by means of conductors placed underground.

**8-5-2: EXCLUSIVE RIGHT TO SELL ELECTRICAL ENERGY; CUSTOMER SERVICE POLICIES:** Idaho Falls Power shall have the exclusive right to sell and deliver electrical energy for residential, commercial and industrial lighting, power, heating and cooling uses located in whole or in part within the City, except as otherwise expressly permitted by law. No other person or entity may sell, re-sell, or distribute electrical energy to any customer whose point of delivery is located within or outside the City, or re-sell energy generated or distributed by the City, unless such delivery is expressly authorized by this Chapter. Idaho Falls Power may from time to time promulgate written rules and regulations and/or customer service policies regarding its delivery of electrical services, provided such regulations are consistent with the provisions of this Chapter. (Ord. 2841, 6-24-10; Ord. 3003, 04-23-15)

8-5-3:       **OWNERSHIP OF SYSTEM:** All lines, equipment, pole and facilities on the supply side of the point of delivery are owned and controlled by the City, except as expressly provided herein. (Ord. 3003, 04-23-15)

8-5-4:       **APPLICABILITY TO ELECTRIC SERVICE CUSTOMERS:** This Chapter shall apply to the City and to every customer to whom electric energy or service is or will be supplied.

8-5-5:       **APPLICATION FOR ELECTRIC SERVICES:** Electric service shall not be delivered to any customer until the customer or his authorized agent shall personally appear at the office of the Utility Clerk, 308 Constitution Way, Idaho Falls, Idaho, and make written application for delivery of electric services. Such application shall be in such form as may be designated by the City Treasurer. The Utility Clerk may require appropriate identification of any customer or agent making application for electric service. Any customer who willfully gives materially false information in his or her application or who shall falsely represent his or her identity shall be guilty of a misdemeanor, and electric service to such customer may be terminated all in accordance with Section 8-5-17 of this Chapter.

8-5-6:       **RATES AND SCHEDULES:** Electric service supplied by the City shall be billed in accordance with the schedule of rates set forth below. The schedule of rates is designed to provide monthly rates for service supplied to the customer. Selection of the appropriate rate schedule shall be based upon the customer's primary intended use on an annual basis.

8-5-7:       **DELIVERY OF SERVICE:** Service shall be delivered only to premises or facilities which are in conformity with the provisions of this Chapter, the Uniform Building and/or Fire Codes, the Zoning Ordinance and all other ordinances of the City. Service will be supplied under a given rate schedule only to such points of delivery as are adjacent to the facilities of the City, and which are adequate and suitable as to capacity and voltage, for service desired and under the rate schedule applicable thereto. The City shall not be obligated to construct extensions or install additional service facilities except as required in Sections 8-5-28 and 8-5-29 of this Chapter.

8-5-8: **VOLUNTARY TERMINATION OF SERVICES:** In the event that any customer desires to discontinue receiving service from the City, he or she shall give advance notice in writing to the Utility Clerk of such desire to discontinue receiving electric services. Customers will be responsible for all electric service supplied to the customer's premises until the date set forth in the customer's notice and for any electricity actually consumed by such customer after the termination date set forth in the customer's notice of termination. In the event any customer fails to give written notice in the manner set forth above, the customer shall be responsible for any and all bills or charges incurred by any person until such notice is given, or until another customer shall make application to receive electric service at the same point of delivery, regardless of whether or not the customer actually consumed electrical energy or utilized electrical service for his or her own purposes.

8-5-9:       **LIMITATIONS OF USE:** No customer shall sell, re-sell or offer to sell or re-sell such electric energy or permit others to use electric energy supplied to the customer's point of delivery, or install any master meter or sub-meter for such energy, unless such sale, use or

installation is authorized in writing by Idaho Falls Power. A customer shall not extend or connect his wiring or installation, or extend his use of service to other buildings or places of use in order to furnish service to more than one building or place of use through one meter or point of delivery unless such buildings, property or place of use is owned or operated by the customer and all electric service is used by the customer in the conduct of the same establishment and business. Notwithstanding the foregoing, Idaho Falls Power may promulgate rules and regulations allowing the master metering, sub-metering, or re-metering of electrical energy for purposes of re-sale for multi-family residential buildings, shopping centers or other commercial uses where (1) such multi-family use existed prior to July 1, 2010, or (2) the HVAC or water heating systems are centrally located or operated and cannot be individually controlled by the tenant or occupant. (Ord. 2841, 6-24-10; Ord. 3003, 04-23-15))

8-5-10:       **RIGHTS OF WAY:** Electric service will be provided only upon the condition that the customer shall, without cost to the City, provide the City a right of way for the City's lines and apparatus serving the customer, across and upon the property owned or controlled by the customer, and shall permit access thereto by the City employees at all reasonable hours or at any time in any emergency situation. By acceptance of or application for electric services, the customer shall be deemed to waive any claim for damages by the City in conducting its customary and routine repair, maintenance and other operations within such right of way.

8-5-11:       **METER SERVICE INSTALLATIONS:** Upon the payment of a meter installation fee in an amount set from time to time by Resolution of the Council per meter the City will, at its own expense, provide and maintain current transformers, if required, and meters to measure electrical consumption by the customer. The fee shall be paid to the City Community Development Services Department prior to the issuance of a building permit. The customer shall provide, install and maintain the meter base and service in accordance with the City Electrical Code, the City Customer Service Policy and the specifications set forth in this Chapter. All meter bases shall be installed in a convenient place on the exterior of the building and placed so that the meter may be read at any time. The customer shall provide access to his meter at all reasonable times and shall not obstruct normal access to the meter. If a meter is inaccessible, energy consumption or demand may be estimated by the City and such estimates shall be deemed to be final. If the customer refuses or fails to provide access to the meter, or to remove the obstruction to access, the City may terminate the customer's service in accordance with the procedure set forth in Section 8-5-17 hereafter and the City may thereafter refuse to provide electric services until proper access is provided and a disconnect fee, as provided in Section 8-5-18 of this Chapter has been paid. (Ord. No. , 2-14-08; Ord. 2964, 8-14-14; Ord. 3003, 04-23-15)

8-5-12:       **MEASUREMENT OF ENERGY:**

(A) All energy delivered by the City shall, except as otherwise specifically provided, be paid for according to measurement by meters located at or near the point where the energy is to be delivered to the customer. When a billing error is found or when a meter is found to be more than two percent (2%) fast or slow under the conditions of normal operation, an adjustment of the charges shall be made for any period during which the billing error or malfunctioning meter can be established with reasonable certainty by the party in whose favor

the adjustment is to be made. Such adjustment shall be based upon the customer's average monthly consumption for the year preceding the date of the erroneous billing or upon any other method which will more accurately estimate electrical consumption for such period.

(B) Upon request by any customer, the City will test the customer's meter for accuracy in its measurement of energy and will do so without charge or expense to the customer, provided that in the event the customer has made a similar request for the same meter within one (1) year immediately preceding such request, the charge for making such meter test shall be in an amount set from time to time by Resolution of the Council. (Ord. No. , 2-14-08; Ord. 2964, 8-14-14)

8-5-13: **FAILURE OF AND TAMPERING WITH METER:** If the customer's meter fails to register at any time, the service delivered and energy consumed during such period of failure shall be determined or estimated by the City on the basis of the best available data. No person shall tamper with any meter or install or cause to be installed any appliance, wiring connection or any other device which prevents or is designed to prevent the meter from accurately recording the total amount of energy used on the premises. In the event evidence of tampering of such device is found on the customer's premises, the City may, in addition to other civil or criminal remedies available at law, terminate electric service to the premises in the manner set forth hereafter and may at once remove or order the removal of any such wiring connection, appliance or device at the customer's expense. In such event the City may estimate the amount of energy consumed and not registered, and the customer shall have the burden of proof of establishing such estimate is grossly unreasonable. The customer shall pay the estimated charges for such unregistered energy and the reasonable labor and material costs incurred in the removal of such wiring connection, appliances or devices and the reasonable costs of repair of any damaged facilities. In addition to the foregoing, the City may, as a condition for continued service or reconnection, impose a reconnect fee in an amount set from time to time by Resolution of the Council for any customer whose meter seal has been broken without prior authorization by the City. Such charges may be collected prior to reconnection or may be included in the customer's regular monthly bill. (Ord. No. , 2-14-08; Ord. 2964, 8-14-14)

8-5-14: **TRANSFORMER LOSSES:** When delivery of service is on the primary side of customer's transformers, the City may install its meters on the secondary side of the transformers, and unless otherwise provided in the rate schedule, in determining the monthly consumption of power and energy, transformer losses and other losses occurring between the point of delivery and the meters will be computed and added to the reading of such meters. When delivery of service is on the secondary side of City's transformers the City may install its meters on the primary side of the transformers and, unless otherwise provided in the rate schedule in determining the monthly consumption of power and energy, transformer losses and other losses occurring between the point of delivery and the meters will be computed and subtracted from the reading of such meters.

8-5-15: **METER READING:** Meters will be read and bills will be rendered based upon the customer's service month. The customer's service month may be determined solely by the City and may commence at any time during a calendar month. If the meter is not read during the customer's service month, bills may be rendered for the customer's estimated energy

consumption based upon the customer's past electrical consumption for the service month in question or upon the typical consumption of a customer having equivalent service and usage requirements.

8-5-16: **BILLINGS FOR ELECTRIC SERVICE:** Billings for electric service shall be rendered upon a service month basis. Bills rendered for electric service are payable upon receipt and shall become delinquent ten (10) days from the date on which the billing was rendered. When the past due date falls on a legal holiday, the next regular business day shall be considered to be the past due date. Billings shall be deemed paid upon receipt at the office of the City Utility Clerk. Bills may be rounded to the nearest even dollar. Any account not paid by the past due date shall bear interest at the maximum rate permitted by law, commencing upon the past due date. (Ord. 2458, 9-12-02)

8-5-17: **TERMINATION OF ELECTRIC SERVICES:** Whenever a bill becomes delinquent for more than fifty (50) days, the City Treasurer shall assess a service charge in an amount set from time to time by Resolution of the Council, and electric service may thereafter be terminated in the manner set forth below. Nothing herein shall authorize the assessment of a service charge greater than the unified utility billing fee, in an amount set from time to time by Resolution of the Council, if the customer is receiving a unified utility billing for water, sewer, electric or sanitation services. In the event of such delinquency, or upon the customer's failure to comply with this Chapter, the City Treasurer shall mail a notice of termination to the customer and the customer's service may thereafter be terminated upon compliance with the procedure set forth hereinafter. The notice of termination shall contain the following:

- (A) The customer's name and mailing address.
- (B) The address or addresses where service is being delivered.
- (C) The customer's account number under which the default has occurred.
- (D) A statement that the customer's account is delinquent and the amount of such delinquency as of a specified date, or a statement of the reason for the proposed disconnect.
- (E) A statement that the customer is entitled to a hearing regarding the alleged default.
- (F) The period of time within which the customer must appear for hearing.
- (G) A statement that if customer does not appear within such time period the amount of the delinquency or the default will be deemed to be correct and that the customer's electric services at all points of delivery may be discontinued immediately thereafter if the bill is not sooner paid or unless a written arrangement for payment of the billing satisfactory to the City Treasurer is made, or unless the default is immediately corrected.



The period of time in which the customer must appear shall not be less than ten (10) days and shall commence two (2) days after the date the notice of termination is mailed. The notice of termination shall be deemed to have been delivered upon its deposit in the United States mail, postage prepaid, addressed to the customer at the customer's address set forth in the customer's application for electric services, or such other address as may be communicated to the Utility Clerk in writing. If the customer fails to appear within such time period and the bill has not been paid, or satisfactory arrangements for the payment thereof have not been made, or the customer's default has not been satisfactorily corrected, the City Treasurer may immediately issue an order to shut off and discontinue service to such customer. If the customer appears at the hearing, the City Treasurer shall hear the customer's complaint, review and examine the testimony and evidence presented and forthwith render a decision based upon such testimony and evidence and upon the records of the City. The City Treasurer may render a decision at the hearing or may render a decision in writing, and in such case shall mail a copy thereof to the customer. In the event the City Treasurer finds the customer to be in default, the City Treasurer shall advise the customer that his or her service will be discontinued at the expiration of three (3) days after notice of the Treasurer's decision is given or mailed, unless the customer's default is satisfactorily corrected before such date. Termination of electric service may be made of any or all accounts under the name of the customer in default, regardless of whether or not the default relates to the premises or account for which termination is ordered. (Ord. 2458, 9-12-02; Ord., 2-14-08; Ord. 2964, 8-14-14)

8-5-18:        **DISCONNECT FEES:** In the event electric service is discontinued for delinquency or other default, service shall not be restored until the amount of the delinquency is paid in full, or the default is corrected, or an arrangement in writing is made for its payment and a disconnect fee in an amount set from time to time by Resolution of the Council. In the event one or more disconnect orders have been issued within the twelve (12) month period preceding the date of the current disconnect order, the disconnect fee shall be in an amount set from time to time by Resolution of the Council. (Ord., 2-14-08; Ord. 2964, 8-14-14)

8-5-19:        **PLANS FOR PAYMENT OF DELINQUENT ACCOUNTS:** No arrangement or plan for the payment of any delinquent account shall be valid unless in writing and signed by the City Treasurer, or a designated representative, or confirmed or approved by a court of competent jurisdiction. In the event a customer proposes an arrangement or plan for payment of a delinquent account, whether informally or by order of court, the City Treasurer may require that a security deposit, subject to the limitations set forth hereinafter, be deposited and held by the City for the duration of the arrangement or plan. If the customer fails to timely pay his bills accruing thereafter or fails to comply with the arrangement or plan, the security deposit may then be forfeited and applied against the amount of any delinquency, and service may thereafter be discontinued in the manner set forth in the plan or arrangement, or if no disconnect procedure is set forth in the plan or arrangement, then electric service may be summarily terminated without further notice. The security deposit shall be returned after full compliance with the plan or an arrangement and as soon as a responsible and timely record of payments of the customer's billings has been established for a period of at least twelve (12) consecutive months. The amount of the security deposit shall be determined at the discretion of the City Treasurer, provided that in no event shall the security deposit exceed three (3) times the amount of the

customer's average monthly bill for the preceding twelve (12) months. If the customer has not received electric service for at least twelve (12) consecutive months, a maximum security deposit amount shall be set from time to time by Resolution of the Council for residential customers and for commercial or industrial customers, or three (3) times the customer's average monthly electric bill, whichever is greater. (Ord., 2-14-08, Ord. 2964, 8-14-14)

8-5-20:        **LIABILITY OR INTERRUPTIONS OF SERVICE:** The City shall not be liable for any loss, injury or damage of any kind resulting from the interruption, reduction, loss or restoration of electric service from any cause, including without limitation any such loss by fire, flood, accident, casualty, sabotage, strike, litigation, act of God or the public enemy or failure or inadequacy of distribution, transmission or generation equipment. Without limitation by the preceding enumeration, in no event shall the City be liable for damage to or destruction of any computer, computer software, photocopier or other electric device which is sensitive to spikes, surges, sags, transients, noise, or other electrical interruptions, outages or fluctuations. Any customer owning or operating such equipment shall take all reasonable precautions to protect such equipment by installation of surge suppressors or other protective devices or equipment. The City disclaims any express or implied warranty of merchantability or fitness for a particular purpose, nor shall the delivery of energy to any customer be construed as or deemed to be the delivery of goods under the Idaho Uniform Commercial Code.

8-5-21:        **SHUT-DOWN FOR REPAIRS:** For the purpose of making necessary repairs or changes to its generating, transmission or distribution facilities, or to avoid damage to property or to persons the City may suspend delivery of electric service for such periods as may be necessary, and the City shall not be liable for damage of any kind, direct or indirect, as a result of such discontinuance of electric service.

8-5-22:        **TEMPORARY SUSPENSION OF DEMAND:** When the customer suspends operation due to strikes, action of any governmental authority, act of God or the public enemy, the customer shall be obligated to pay the minimum monthly demand charge provided in the rate schedules set forth in this Chapter, or any minimum guarantees established in any special written agreement with the customer, irrespective of such temporary suspension.

8-5-23:        **INTERFERENCE WITH SERVICE:** The City may refuse to supply loads of a character that may seriously impair service to any other customers, and the City may disconnect existing service if the customer's load is seriously impairing service to any other customers. Where the customer's use of electricity is intermittent or subject to extreme fluctuations, the City may require the customer to provide equipment to reasonably limit or moderate such fluctuations.

8-5-24:        **PROTECTION OF CUSTOMER'S EQUIPMENT:**

(A)    The customer is solely responsible for the selection, installation and maintenance of all electrical equipment and wiring, other than the City's meters and apparatus, on the load side of the point of delivery.

(B) All electric motor installations shall include effective protective apparatus, or have adequate protective measures within the motor to accomplish equivalent protection as follows:

- (1) Overload and over current protection for each motor by suitable thermal relays, fuses, or circuit interrupting devices automatically controlled to disconnect the motor from the line to protect it from damage caused by overheating.
- (2) Open phase protection on all polyphase installations to disconnect motors from the line in the event of opening of one phase.
- (3) All polyphase motors for the operation of passenger and freight elevators, cranes, hoists, draglines and similar equipment shall have reverse phase relays, or equivalent devices, for protection in case of phase reversal.
- (4) Motors that cannot safely be subjected to full voltage at starting should be provided with a device to ensure that upon energization at full voltage such motors will be disconnected from the line.

(C) The customer shall be responsible to install and maintain surge suppressors, auxiliary power units or other protective devices for the protection of computers, computer software and programming, televisions, VCR's or other equipment sensitive to voltage spikes, surges, sags, transients, noise interruptions or outages.

(D) The customer shall install and maintain all suitable protective devices and equipment to protect themselves, life and property, from harm or injury from electric current and the City assumes no duty to warn or otherwise assist the customer in the selection or use of electrical appliances, tools, equipment or facilities.

8-5-25: ALLOWABLE MOTOR STARTING CURRENTS: No customer shall use any motor having a rated horsepower of ten (10) or greater without first obtaining a permit therefor. The City may require the installation of reduced voltage starting equipment or other equipment necessary to prevent interruptions of electric service within the customer's immediate service area as a condition for the issuance of the permit. Any customer desiring to use such motors shall make written application therefor to Idaho Falls Power, stating the size and serial number of the motor, the intended use, location of business and such other information Idaho Falls Power may require in order to determine the impact the proposed use will have on the system. It shall be unlawful for any customer to use, install or replace any ten (10) HP or greater motor, except as specifically identified in and authorized by a permit issued Idaho Falls Power. (Ord. 3003, 4-23-15)

8-5-26:       **MAINTENANCE OF EQUIPMENT:** The customer shall provide, operate and maintain all transformers, lines and equipment on the load side of the point of delivery designated by the City.

8-5-27:       **SECURITY LIGHTING:** All exterior security lighting installed after the effective date of this Code, shall consist of overhead circuits, wood or metal poles and standard high pressure sodium or metal halide luminaries having a rated average lumen output as follows:

**WATTAGE**

100 W  
200 W  
400 W  
1,000 W

For underground service installations, the customer shall pay the cost of the metal pole and install a concrete base in accordance with City Specifications. The customer shall also be responsible to open and close all trenches for electrical distribution lines.  
(Ord. 2927, 09-12-13)

8-5-28:       **OVERHEAD EXTENSIONS:** An extension is any continuation of, or branch from, the nearest available existing line of the City, including any increase of capacity of an existing line or facilities or the supply of three-phase electric service. The City will make an extension for electric service at its own expense whenever the estimated cost thereof is less than two hundred fifty dollars (\$250) per residential customer served by the extension or less than five hundred dollars (\$500) for any other customer served by the extension. If the estimated cost for making an extension exceeds the amount set forth above, the customer shall pay such excess amount to Idaho Falls Power and Idaho Falls Power shall then make such extension. In the event the actual cost of making such extension exceeds the amount estimated by Idaho Falls Power, the customer shall pay such excess before electric service is provided. All extensions of distribution lines beyond the primary meters shall be performed by and at the sole expense of the industrial customer. (Ord. 3003, 4-23-15)

8-5-29:       **UNDERGROUND DISTRIBUTION LINES:** Idaho Falls Power may establish reasonable rules and regulations regarding the installation of underground distribution lines and related equipment for residential and commercial electric service. Such rules and regulations shall provide an orderly procedure for the safe, efficient and economical installation of such underground distribution lines. Such rules may require the customer or developer to install all lines, equipment and facilities directly related to the underground electric service requested or may establish fair and non-discriminatory charges for work or materials supplied by Idaho Falls Power to the customer or developer. (Ord. 3003, 4-23-15)

8-5-30:       **SCHEDULE OF RATES:**

(A) **BILLINGS:** Customers of Idaho Falls Power shall be billed for electric energy and demand according to the schedule of rates set forth below. No other rates shall apply except by

special permit or contract approved by the Council. Customer accounts shall be billed at intervals of approximately every thirty (30) days, provided that failure to so bill shall not relieve the customer of any obligation to pay for electric service when actually billed for such service.

(B) **COMMERCIAL RATE:** This rate shall be applicable at each point of delivery, for all energy requirements delivered at nominal voltages up to four hundred eighty (480) volts to commercial customers. The Commercial Rate shall be in an amount set from time to time by Resolution of the Council for:

Energy Charges; and

Demand Charges

(C) **SMALL INDUSTRIAL RATE:** This rate shall be applicable at each point of delivery, for all energy requirements delivered at nominal primary voltages to industrial customers having electric service with a minimum capacity of two hundred seventy five (275) KW. The Small Industrial Rate shall be in an amount set from time to time by Resolution of the Council for:

Energy Charges; and

Demand Charges

(D) **LARGE INDUSTRIAL RATE:** This rate shall be applicable at each point of delivery, for all energy requirements delivered at nominal primary voltages to industrial customers having electric service with a minimum capacity of two thousand (2,000) KW. The Large Industrial Rate shall be in an amount set from time to time by Resolution of the Council for:

Energy Charges; and

Demand Charges

(E) **LARGE SINGLE LOAD RATE:** This rate shall be applicable to all single load customers whose aggregate demands at one or more points of delivery on the same premises exceed 5,000 kW. This rate shall be a unique, negotiated rate designed to return to the utility all costs of service that may be fairly and equitably apportioned to the customer using generally accepted rate-making principles, based upon the customer's unique circumstances and service needs. In no event shall such rate cause subsidization of such customer by other classes of customers nor cause subsidization of such other classes by the large single load customer. This rate shall be negotiated within thirty days after the date the customer's demands exceed such amount, provided that in the event the customer and the utility are unable to agree upon a fair and equitable rate, the utility may unilaterally implement such rate, using the principles stated above.

(F) **RESIDENTIAL RATE:** This rate shall be applicable for all electric service required by residential customers in single private dwelling units and individual family apartments for general domestic use only. The Residential Rate shall be in an amount set from time to time by Resolution of the Council for:

Energy Charges; and

Demand Charges

(G) **CITY STREET LIGHTING SERVICE:** This rate is applicable for electric service for the lighting of public streets, alleys, thoroughfares and public parks and recreational facilities. The City Street Lighting Service Rate shall be in an amount set from time to time by Resolution of the Council for:

Energy Charges; and

Demand Charges

(H) **CITY-OWNED PUBLIC FACILITIES:** This rate is applicable for all City-owned public facilities except street lighting. The City-Owned Public Facilities Rate shall be in an amount set from time to time by Resolution of the Council for:

Energy Charges; and

Demand Charge

(I) **SECURITY LIGHTING:** This rate is for electric service for lighting private property, including without limitation, parking lots, storage lots, driveways and yards. The rate shall consist of a fixed monthly charge for each luminaire, based upon the type of luminaire and its rated average minimum lumen output. The Security Lighting Rate shall be in an amount set from time to time Resolution of the Council for the following:

<b>Wattage</b>	<b>Type of Luminaire</b>
100 W	High Pressure Sodium
200 W	High Pressure Sodium
400 W	Metal Halide

Prior to the delivery of any energy to a security light, the customer shall pay a customer installation fee in an amount set from time to time by Resolution of the Council to the City Treasurer for each security lighting pole installed.

(J) TEMPORARY OR CONSTRUCTION SERVICE: This rate is for temporary service that is single phase 120/240 volt and a maximum of two hundred (200) amps. All other construction service requirements must be negotiated with Idaho Falls Power. The Temporary or Construction Service Rate shall be in an amount set from time to time by Resolution of the Council for:

Construction of Residential Occupancies; and

Construction of Nonresidential Occupancies

(K) TRAILER COURT SERVICE: This rate shall apply to electrical service to trailer courts. The trailer court owner may remeter and bill for service to each of the trailers according to rates established and posted on the premises and this service will be regarded as an exception to the limitations of use stated in Section 8-5-9 of this Chapter. The Trailer Court Service rate shall be in an amount set from time to time by Resolution of the Council for:

Energy Charges; and

Demand Charges

(Ord. 2422, 12-07-01; Ord. 2443, 04-23-02)(Ord. 2455, 8-22-02; Ord. 2582, 1-27-5; Ord. 2641, 04-27-06; Ord. 2690, 03-09-07; Ord. 2745, 4-24-08; Ord. 2823, 9-10-09; Ord. 2883, 09-22-11; Ord. 2927, 09-13-13; Ord. 2964, 8-14-14; Ord. 3003, 04-23-15)

8-5-31: POWER FACTOR PENALTY: The commercial and single meter industrial rates stated above are based upon a customer power factor of eighty five percent (85%) lagging or higher as determined from simultaneous measurement of KWH and K Var h during any billing period. If the customer's power factor is found to be less than eighty five percent (85%) lagging, the demand as recorded by the City's meter will be increased by adding to the recorded demand a power factor penalty in the amount of the product of the recorded demand and .0075 multiplied by the number of percentage points, rounded to the next whole number, that the power factor is less than eighty five percent (85%) lagging.

8-5-32: SELECTION OF RATE SCHEDULES: The customer shall have the responsibility to apply for the appropriate rate applicable to the desired type of service. The rate shall be applied upon determination by the City that the customer is eligible for the rate requested by the customer in his application for electrical service. Services qualifying for two or more rates shall be billed at the highest applicable rate.

8-5-33: TRANSFER FROM OTHER UTILITY: Any person who has previously been connected to the facilities of another electric supplier shall, before any extension, connection or delivery of City electric services to such person, pay a transfer charge to the City Utility Clerk. Such transfer charge shall equal one-half (1/2) of any transfer charge, fee or expense which is paid or which may be paid by the City to the other electric supplier as a direct result of such person's transfer to the City electric facilities; provided, however, no charge shall be imposed or collected from the new customer by reason of the purchase from the other electric supplier by the City of any transmission lines, equipment or other facilities used by the transferring customer.

8-5-34:       NON-OWNER-OCCUPIED PROPERTIES: When electric or other public utility services provided by the City have been delivered to any customer who is not the lawful owner of the premises, and such customer abandons or vacates the premises, then and in such event, the Utility Clerk may place the account in the name of the owner or owners of the premises where utility service is delivered or available, and may bill such owner for all utility services delivered thereafter at that point of delivery until a new written application for electric services is made or the owner or owners request termination of utility services; provided, however, the account shall not be placed in the owner's name until five (5) days after the Utility Clerk has mailed written notice to the last known address of such owner informing him or her of the proposed action on the account.



## **CHAPTER 6 SANITATION SERVICE**

### **SECTION:**

- 8-6-1: Purpose
- 8-6-2: Application
- 8-6-3: Definitions
- 8-6-4: Accumulation of Refuse
- 8-6-5: Deposit of Refuse on Public Property
- 8-6-6: Unlawful Use of Refuse Containers
- 8-6-7: Sanitation Service Charge
- 8-6-8: Removal of Waste
- 8-6-9: Residential Waste Containers--Regulations
- 8-6-10: Commercial Containers
- 8-6-11: Use of Containers
- 8-6-12: Compost Piles
- 8-6-13: Collection of Waste Containers
- 8-6-14: Exceptions to Waste Removal
- 8-6-15: Scattering of Waste
- 8-6-16: Commercial Sanitation Services Prohibited
- 8-6-17: Sanitary Service Charges
- 8-6-18: Billings for Sanitary Service
- 8-6-19: Termination of Services

8-6-1: **PURPOSE:** The accumulation of waste, refuse, trash, garbage, rubbish and other deleterious substances upon private properties, vacant lots and in streets and alleys constitutes a public nuisance and menace and contributes to the spread of infectious, contagious and epidemic diseases. It is necessary for the preservation of health, safety, sanitation, peace and public welfare that proper and adequate regulations be adopted to require property owners and occupants to secure containers and receptacles of sufficient kind and size in which to deposit waste, refuse, trash, garbage and rubbish for collection and removal at regular intervals. The high cost of acquiring capital facilities, equipment and vehicles necessary to provide removal of refuse requires the limitation of the number of providers of sanitation services within the City.

8-6-2: **APPLICATION:** This Chapter applies to the delivery of sanitation services to all residential, commercial and industrial properties within the City.

8-6-3: **DEFINITIONS:** For the purpose of this Chapter, the definitions used in Chapter 26, Title 5 of this Code shall also apply to this Chapter. Certain other terms shall have the meanings ascribed below:

**CONTAINER, COMMERCIAL:** A container for waste having a capacity in excess of 1 cubic yard.

**CONTAINER, RESIDENTIAL:** A container for waste having a capacity of thirty-two (32) gallons or less.

**OCCUPANT:** Any person occupying, possessing or having control of real property located in the City, whether as an owner, tenant or licensee.

**SANITARY SERVICE:** The availability of sanitation services provided by the Sanitation Division. (Ord. 3003, 04-23-15)

**8-6-4: ACCUMULATION OF REFUSE:** It shall be unlawful for any occupant to accumulate or allow the accumulation of refuse upon property under his control in a manner which is markedly offensive or unsightly, attracts insects or rodents, is unsanitary, unsafe or unhealthy or which otherwise causes a public nuisance.

**8-6-5: DEPOSIT OF REFUSE ON PUBLIC PROPERTY:** It shall be unlawful to deposit or bury refuse in or upon any public alley, street, park or other public property, or upon the premises of another without the consent of the occupant of such other property.

**8-6-6: UNLAWFUL USE OF REFUSE CONTAINERS:** It shall be unlawful for any person to deposit refuse into any waste container owned or leased by another without the express or implied permission of the owner or lessee thereof.

**8-6-7: SANITATION SERVICE CHARGES:** Sanitation services for all occupants of real property located within the City will be provided subject to the occupant's payment of the charges and fees established hereafter, and subject to the provisions of this Chapter. Every occupant shall pay a sanitation service charge in accordance with the rate schedule set forth in this Chapter irrespective of whether waste is removed from the occupant's residence or business during the period for which the charge is made. If no waste is removed from the occupant's premises during the billing period, then the occupant shall be assessed the minimum charge for the type of sanitation service available.

**8-6-8: REMOVAL OF WASTE:** The Sanitation Division will remove waste deposited in residential and commercial waste containers in accordance with the provisions of this Chapter. The Sanitation Division may decline to remove waste from any container which does not meet the requirements of this Chapter or waste which is not placed in such waste containers. Notwithstanding such removal, every occupant of a residential and commercial property shall have the obligation to remove all waste accumulating on property under his or her control, in accordance with Section 8-6-4 of this Chapter. (Ord. 3003, 04-23-15)

**8-6-9: RESIDENTIAL WASTE CONTAINERS--REGULATIONS:** All residential waste containers shall have a capacity of not more than 32 gallons and when filled, shall weigh not more than 50 pounds. Such containers shall be constructed of galvanized metal or other metal or plastic material which is strong, not susceptible of corrosion, and resistant to entry or penetration by rodents, insects or dogs or other small animals. Each waste container shall have two handles tightly secured to the container and a tight-fitting lid or latchable cover.

8-6-10:       **COMMERCIAL CONTAINERS:** All commercial containers shall consist of containers furnished by the City or approved by the City prior to being placed into service by the customer. All commercial containers shall be constructed and equipped in a manner compatible with the mechanized equipment of the Sanitation Division. The Sanitation Division may promulgate reasonable rules and regulations regarding the construction of customer-furnished commercial containers in order to assure uniformity, compatibility, adequacy and durability of the container. (Ord. 3003, 04-23-15)

8-6-11:       **USE OF CONTAINERS:** It shall be unlawful to deposit, store or place waste into any waste container that does not have a tight-fitting or latchable lid or cover placed securely thereon. Notwithstanding the foregoing, grass, leaves, weeds and clippings from trees or ornamental shrubbery may be placed in cardboard cartons, bushel baskets, boxes or strong plastic garbage sacks, provided the same are securely covered or closed in a manner which prevents the contents from being blown, spilled or strung about by wind or animals. The Sanitation Division will remove such containers provided the same do not exceed 50 pounds in weight or 10 cubic feet in volume. (Ord. 3003, 04-23-15)

8-6-12:       **COMPOST PILES:** Compost piles may be maintained for fertilization purposes, and matter used for such purposes may be transported, kept and used in any manner which does not emit obnoxious or offensive odors.

8-6-13:       **COLLECTION OF WASTE CONTAINERS:** The Sanitation Division will collect waste containers in accordance with a collection schedule established and promulgated by the Sanitation Division. Occupants needing more frequent removal of waste may request such removal from the Sanitation Division, and the removal will be provided in accordance with the Schedule of Rates set forth hereafter. All waste containers shall be placed adjacent to the alley line of any premises on the day scheduled for pickup, or if the premises are not adjacent to an alley, then at the street curb or inside edge of the sidewalk where the sidewalk is adjacent to the curb, on the morning of the day scheduled for collection. All empty waste containers shall be withdrawn from the curb or inside edge of the sidewalk as soon as possible after removal of the waste from the container. (Ord. 3003, 04-23-15)

8-6-14:       **EXCEPTIONS TO WASTE REMOVAL:** The Sanitation Division shall have no duty to remove the following waste:

- (A)     Dirt, earth or debris from construction or building renovation.
- (B)     Appliances, large or heavy machines, tree trunks or other debris or waste not placed within a waste container meeting the specifications of this Chapter.
- (C)     Hazardous waste, toxic chemicals, waste oils, lubricants or any other substance harmful to life or limb.
- (D)     Dead animals.

Notwithstanding the foregoing, every occupant of property within the City shall be fully responsible to remove such waste from his or her premises. (Ord. 3003, 04-23-15)

8-6-15:        **SCATTERING OF WASTE:** It shall be unlawful to scatter the contents of any waste container upon any street, alley or public park within the City.

8-6-16:        **COMMERCIAL SANITATION SERVICES PROHIBITED:** It shall be unlawful for any person to conduct, engage or otherwise participate in any private business, undertaking or enterprise for the removal or disposal of waste for pecuniary gain or profit. Nothing herein shall prohibit the use of waste for recycling purposes by any licensed recycling business, salvage yard, second-hand dealer or other similarly licensed enterprise.

8-6-17:        **SANITARY SERVICE CHARGES:** There is hereby assessed for each structure used primarily for human occupancy, a monthly charge in an amount set from time to time by Resolution of the Council for sanitary services based upon whether the service is residential or commercial; the number or size of waste containers used; and the frequency of pickup services, for:

<b>RESIDENTIAL SERVICE</b>
1 Pickup per week
<b>COMMERCIAL SERVICE</b>
Hand-load Containers:
1 to 6 Pickups per week
Small Containers: - 1- 1/2 C.Y.
1 to 7 Pickups per week
Pickups per week – 3 C.Y.
1 to 7 Pickups per week
Pickups per week – 4 C.Y.
1 to 7 Pickups per week
<b>LARGE CONTAINERS</b>
Pickups per week for Uncompacted and Compacted 30 C.Y.
1 to 24 Pickups per week

Where more than one (1) single-family living unit is served by a single commercial container, each single-family unit so served shall be charged a monthly fee in an amount set from time to time by Resolution of the Council. Whenever any container is used for disposal of construction debris, an additional charge in an amount set from time to time by Resolution of the Council, shall be added to the rates established for each occasion when the container is emptied by the City Sanitation Service. Notwithstanding the foregoing, if a residential customer consistently utilizes more than three (3)

containers per pickup, or requires more than one (1) pickup per week, he or she shall be charged the commercial hand-load container rate.

A minimum monthly charge in an amount set from time to time by Resolution of the Council, or any portion of a month will be charged for each 30 cubic yard uncompacted container in service during the monthly billing cycle. If the container is picked up during the monthly billing cycle, the applicable pickup charge will apply and the minimum monthly charge in an amount set from time to time by Resolution of the Council will not be added. (Ord. 2311, 2-25-99; Ord. 2668, 09-14-06; Ord. 2683, 12-14-06; Ord. 2751, 5-22-08; Ord. 2964, 8-14-14)

8-6-18: **BILLINGS FOR SANITARY SERVICE:** Bills for sanitary service shall be rendered monthly based upon billing cycles determined by the City. All bills shall be due on or before the 10th day of the month following the date of the billing. Billings shall be mailed to the address stated in the customer's application for utility services, or such other address as may be delivered to the City Utility Clerk in writing. Any account not paid by the past due date shall bear interest at the maximum rate permitted by law, commencing upon the past due date. (Ord. 2458, 6-12-02)

8-6-19: **TERMINATION OF SERVICES:** In the event any occupant or customer fails to pay the monthly charges set forth herein, or otherwise fails to comply with the provisions of this Chapter, then the City may terminate the water, sewer or electric service to the premises receiving sanitation service or any other property owned by the customer receiving such services. Such termination of services shall conform to the procedures set forth in Section 8-5-17 of this Code. In the event the monthly services charges are not timely paid, the City Treasurer shall also add a service charge, set in an amount from time to time by Resolution of the Council, to the bill, provided however nothing herein shall authorize the assessment of a service charge greater than the maximum unified utility service charge, set from time to time by Resolution of the Council, if the customer is receiving a unified utility billing for water, sewer, electric or sanitation services. (Ord. 2458, 6-12-02; Ord. 2964, 8-14-14)

## **CHAPTER 7**

### **PUBLIC RIGHT OF WAY CONSTRUCTION**

#### **SECTION:**

- 8-7-1: Definitions
- 8-7-2: Permit Required
- 8-7-3: Exceptions
- 8-7-4: Insurance
- 8-7-5: Application for Permit
- 8-7-6: Permit Fees
- 8-7-7: Location Procedure
- 8-7-8: Completion of Work and Backfilling
- 8-7-9: Time to complete Repairs
- 8-7-10: Maintenance and Safeguards
- 8-7-11: Warranty of Repairs
- 8-7-12: Repairs by City
- 8-7-13: Remedy for Noncompliance
- 8-7-14: No Duty

8-7-1: **DEFINITIONS:** For the purposes of this Chapter, certain terms shall have the meanings ascribed below:

**ACT:** The Underground Facilities Damage Prevention Act as set forth in Idaho Code Section 55-2201, et seq.

**CONSTRUCTION:** The construction, placement or laying of any asphalt or concrete pavement; sidewalk; driveway; curb; gutter; water line; sanitary sewer line; storm drain line; telephone line, conduit or facilities; electrical line, conduit or facilities; cable TV line, conduit or facilities; gas line or facilities; or any other similar structure or appurtenant facilities within any street, alley, easement or other public right-of-way of the City.

**EXCAVATION:** Any operation in which earth, rock or other material in the ground is moved or otherwise displaced by any means, including, but not limited to explosives.

**EXCAVATOR:** Any person who engages directly in excavation within City limits.

**REPAIR:** The improvement, alteration, modification or replacement of any asphalt or concrete pavement; sidewalk; driveway; curb; gutter; water line; sanitary sewer line; storm drain line; telephone line, conduit or facilities; electrical line, conduit or facilities; cable TV line, conduit or facilities; gas line or facilities; or any other structure or appurtenant facilities in any street, alley, easement or other public right-of-way of the City.

**UNDERGROUND FACILITY:** Any item buried or placed below ground for use in connection with the storage or conveyance of water (unless being delivered primarily for landscape sprinkler systems), sewage, electronic signal, telephonic or telegraphic communications, cable television,

fiber optic, electrical energy, petroleum products, gas, gaseous vapors, hazardous liquids or other substances, including, but not limited to pipes, sewers, conduits, cables, valves, lines, wires manholes, attachments and those parts of poles or anchors located below ground.

**WORKING DAYS:** All days except Saturdays, Sundays and legal holidays.

**WORKING HOURS:** The hours from eight o'clock (8:00) a.m. to five o'clock (5:00) p.m. local time of any working day. (Ord. 2970, 11-25-14)

8-7-2:       **PERMIT REQUIRED:** No person shall engage in any construction, repair or excavation in any street, alley, easement or other public right-of-way within the City without first obtaining a permit to do so approved by the City Engineer. Engaging in any such construction, repair, or excavation without a permit shall constitute an infraction. No permit under this Chapter shall be valid until or unless the notice provisions of Idaho's Underground Facilities Damages Prevention Act have been complied with. The permit shall clearly define the area within which the permittee may do such construction, repair or excavation. A copy of the permit shall be kept on file with the City Engineer for a period of not less than ten (10) years after acceptance of the completed work that was permitted. The permittee shall keep a copy of the permit onsite at all times that work under this permit is being performed. (Ord. 2970, 11-25-14)

8-7-3:       **EXCEPTIONS:** Unless facts exist which would reasonably cause an excavator to believe that an underground facility exists within the depth of the intended excavation, a permit shall not be required for the following excavations:

(A)   The tilling of soil to a depth of less than fifteen inches (15") for agricultural purposes;

(B)   For replacement of highway guardrail posts, sign posts, delineator posts, culverts, electric poles, telephone poles and traffic control device supports in the same approximate location and depth of the replaced item within a public highway right-of-way.

(C)   For emergency repairs to underground facilities when any delay in performing the work could reasonably result in a hazard to life or property. In such case, the person performing the work shall notify the City Engineer as soon as practicable and shall complete, backfill, maintain, safeguard, and warranty the work in accordance with the provision of this Chapter. (Ord. 2970, 11-25-14)

8-7-4:       **INSURANCE:** No permit shall be issued pursuant to this Chapter unless the applicant presents with the application, or has on file with the City Engineer, a certificate of insurance from an insurance company qualified to write insurance contracts within the State of Idaho, certifying that the applicant has a policy of public liability insurance in an amount of not less than five hundred thousand dollars (\$500,000) single limit liability for personal injury, death and property damage; provided, however, if the work to be done under the permit is limited to excavation in an easement situated entirely on private property or is for construction of a

concrete sidewalk, driveway or curb and gutter within a street right-of-way, but parallel with and adjacent to private property, the amount of such insurance shall be not less than one hundred thousand dollars (\$100,000) single limit for personal injury, death and property damage. Coverage for underground hazard shall also be included. Permits involving work requiring the use of explosives or work that may endanger or cause the collapse of adjacent buildings or facilities shall also require the permittee to carry explosion and collapse hazard coverage with a minimum limit of five hundred thousand dollars (\$500,000) single limit liability for personal injury, death, and property damage. Each policy, as required above, shall carry and endorsement naming the City as an additional insured under said policy. Said insurance policy or policies shall contain a clause requiring that the City Engineer be given at least thirty (30) days advance written notice in the event of expiration or anticipated cancellation. The permit shall be revoked at the time such insurance expires or is cancelled unless a certificate of comparable insurance is filed with the City Engineer prior to the time of cancellation or expiration of the original policy of insurance. (Ord. 2964, 8-14-14; Ord. 2970, 11-25-14)

8-7-5:        **APPLICATION FOR PERMIT:** Applications for construction, repair and excavation permits shall be made at the office of the City Engineer and shall be accompanied by payment of the permit fee. The application shall state the applicant's name, business or home address, the applicant's City Right-of-Way Contractor's license number (if any), telephone number, the location of the construction, the name, address and telephone number of the owner of the property where such repair or excavation will occur, the date notification was given to all one number locator services or the owner of any underground public facility as defined under the Act, and a detailed description of the work to be performed at the location specified. If the applicant complies with the provisions of this Chapter and the proposed construction, repair or excavation work complies with this Code and will not endanger public health, safety or welfare, the City shall issue the permit, provided the City may issue the permit subject to such conditions as are necessary to protect the public health, safety and welfare. No permit shall be issued to any person who does not possess all licenses required by state or local law. (Ord. 2970, 11-25-14)

8-7-6:        **PERMIT FEES:** The fee for each permit issued pursuant to this Chapter shall be in an amount set from time to time by Resolution of the Council. (Ord. 2970, 11-25-14)

8-7-7:        **LOCATION PROCEDURE AND NOTIFICATION REQUIREMENTS:** The permittee shall call for utility locates in accordance with the Idaho Code. The permittee shall also give written or oral notice to the City Engineer or a designated representative not more than seven (7) working days nor less than one (1) working day prior to commencing construction, repair or excavation. If the permittee, after commencing work, shall cease construction, repair or excavation for more than one working day, then notice shall again be given to the City Engineer or a designated representative not more than seven (7) working days nor less than one (1) working day prior to the time when construction, repair or excavation shall again commence. (Ord. 2970, 11-25-14)

8-7-8:        **COMPLETION OF WORK AND BACKFILLING:** All work shall be expeditiously performed and completed as soon as reasonably possible. Upon completion of construction or repair, the permittee shall promptly backfill any street, alley, easement or other public right-of-way in which permittee has made any excavation and restore all surface



improvements. All work, backfilling, and surface restoration shall be done in accordance with the drawings and specifications approved by the City. Any survey monuments disturbed shall be reestablished and remonumented as set forth in the Idaho Code. (Ord. 2970, 11-25-14)

8-7-9: **TIME TO COMPLETE REPAIRS:** Permanent surface repairs shall be completed by the permittee not later than three (3) days after the excavation has been backfilled, unless otherwise authorized by the City Engineer or his designated representative. If weather conditions prohibit permanent repairs, the City Engineer, or a designated representative, may authorize the use and installation of temporary cold patches. Such temporary cold patches shall be replaced by the permittee as soon as weather permits. (Ord. 2970, 11-25-14)

8-7-10: **MAINTENANCE AND SAFEGUARDS:** The permittee shall continuously maintain the construction, repair or excavation site in a safe condition and keep the site free from any condition that may cause risk of harm to any person or property at all times after the work has commenced and until all work, including permanent patching, has been completed and accepted by the City. During such time, permittee also shall provide, install and continuously maintain proper safeguards, signs and barricades at the construction, repair or excavation site. Such signs and barricades shall conform to the requirements and standards set forth in the most recent edition of the Manual on Uniform Traffic Control Devices (MUTCO) published by the U.S. Department of Transportation, Federal Highway Administration, or any other manual adopted by the State of Idaho, Department of Transportation, pursuant to the Idaho Code. (Ord. 2970, 11-25-14)

8-7-11: **WARRANTY OF REPAIRS:** The permittee shall warrant to the City the adequacy and continued satisfactory condition and function of all backfill and permanent patches installed by permittee or by any agent or employee of permittee for a period of one year after the completed work has been accepted by the City Engineer. Such warranty shall extend only to any unsatisfactory condition or function caused by inferior design, workmanship and materials furnished by permittee or by any agent or employee of permittee. (Ord. 2970, 11-25-14)

8-7-12: **REPAIRS BY CITY:** If the permittee fails to install permanent surface repairs within three (3) days after completion of backfill, or if the permittee fails to honor the warranty set forth in the preceding section after demand by the City, the City may complete the work and make such repairs. If such repairs are completed by the City, the City may charge the cost of the repairs to the permittee. The cost of repairs shall be based upon the actual charges and cost to the City of repairs at the time the repair was completed. The permittee shall pay such cost within thirty (30) days after the City has given written notice to permittee of the cost. (Ord. 2970, 11-25-14)

8-7-13: **REMEDY FOR NONCOMPLIANCE:** If any permittee fails to perform any duty imposed by this Chapter or if any permittee fails to pay the costs assessed pursuant the preceding section within the time provided therein, the City, at its option and upon prior written notice to permittee, may suspend or revoke any contractor's license issued by the City to the permittee, cancel or revoke all permits held by the permitted and refuse to issue to the permittee further permits for construction, repair or excavation in public rights of way or easements of the City. The City may also make a claim against the permittee's bond. (Ord. 2970, 11-25-14)

8-7-14: NO DUTY: Nothing in this Chapter shall be deemed or construed to impose any private duty or obligation upon the City to properly or accurately locate any utility line or facility or to ensure that a permittee fully complies with the provisions hereof. (Ord. 2970, 11-25-14)

## **CHAPTER 8 USE OF PUBLIC SIDEWALKS**

### **SECTION:**

- 8-8-1: Purpose
- 8-8-2: Unlawful to Obstruct Sidewalks
- 8-8-3: Unlawful to Install Structure or Fixture
- 8-8-4: Sale of Merchandise
- 8-8-5: Public Fixtures
- 8-8-6: Installation of Mailboxes
- 8-8-7: Non-Conforming Mailboxes
- 8-8-8: Notice of Violations
- 8-8-9: Sidewalk Sales
- 8-8-10: News Racks, News Vending Machines and Newsstands
- 8-8-11: Bus Stop Benches
- 8-8-12: Definitions
- 8-8-13: Permits
- 8-8-14: Number of Locations
- 8-8-15: Permit Not a Property Right
- 8-8-16: Compliance With Code
- 8-8-17: Indemnification
- 8-8-18: Standards
- 8-8-19: Maintenance
- 8-8-20: Identification
- 8-8-21: Advertising
- 8-8-22: Notice of Violation
- 8-8-23: Revocation of Permit
- 8-8-24: Emergency Removal of Benches
- 8-8-25: Disclaimer

8-8-1: PURPOSE: The purposes of this Chapter are:

(A) To promote the general health, welfare and safety of all persons traveling over or upon and otherwise using the public sidewalks within the City.

(B) To ensure free and unrestricted access of the public to the public sidewalks and thoroughfares, residences and buildings abutting the same.

(C) To prevent personal injury and risk of bodily harm by objects being placed or maintained upon the public sidewalk in a manner which is dangerous or unsafe.

(D) To facilitate the installation, repair and maintenance of public sidewalks and thoroughfares and all public utilities, fixtures, signs, signals and other public structures, fixtures or receptacles placed thereupon.

(E) To promote the safe movement of vehicular traffic and provide for unobstructed view of the streets and public sidewalks for such vehicular traffic.

(F) To promote a clean, attractive and neat appearance of the public sidewalks and thoroughfares and to prevent unreasonable accumulation of refuse and litter thereupon.

8-8-2: UNLAWFUL TO OBSTRUCT SIDEWALKS: It shall be unlawful for any person to obstruct any street, alley or public sidewalk within the City.

8-8-3: UNLAWFUL TO INSTALL STRUCTURE OR FIXTURE: It shall be unlawful for any person to store, install, maintain or operate any material, vehicle, structure, fixture or business upon any public sidewalk within the City, except as permitted by Sections 8-8-5 through 8-8-9 of this Chapter.

8-8-4: SALE OF MERCHANDISE: It shall be unlawful to sell, display or advertise the sale of any goods, wares, merchandise, food or beverage upon or from any cart, rack, structure situated upon any public sidewalk within the City, except as permitted by Sections 8-8-5 through 8-8-9 of the City Code.

8-8-5: PUBLIC FIXTURES: Notwithstanding Sections 8-8-2 and through and including 8-8-4 of this Chapter, the City or the State of Idaho may install, place and maintain utility poles and equipment, fire hydrants, traffic signs and signals, benches, receptacles for decorative trees and plants, and any other publicly-owned fixtures or structures upon public sidewalks within the City.

8-8-6: INSTALLATION OF MAILBOXES: Notwithstanding Sections 8-8-2 through and including 8-8-4 of this Chapter, mailboxes may be installed, constructed and maintained upon the public sidewalks subject to the following restrictions and standards:

(A) The mailbox shall be permanently affixed on the top of a vertical metal pipe or bar with the bottom of the mailbox thirty-eight inches (38") above the top of the curb. The pipe or bar shall not exceed two inches (2") in diameter or two inches (2") on a side if rectangular.

(B) No part of the mailbox or structure shall protrude towards the street beyond the back edge of the curb or curb line nor extend towards the residence more than fifteen inches (15") from the back edge of the curb line.

(C) The foot of the pipe shall be grouted or otherwise securely embedded in a hole through the sidewalk not exceeding six inches (6") in diameter, the center of which shall be no more than eight inches (8") nor less than six inches (6") from the back of the curb edge or curb line.

(D) Barrels, cans, receptacles, stones, masonry or other non-metallic materials supporting the structure, except as set forth hereinabove are prohibited.

(E) Spikes, decorations, metal works or other items shall not protrude from the structure in a manner which creates an unreasonable risk of bodily injury or harm to pedestrians.

8-8-7: NON-CONFORMING MAILBOXES: All mailboxes installed prior to the effective date of this section and in conformity with Ordinance No. 1748, Ordinances of the City, shall be deemed to be in conformity with this section; provided, however, if such mailbox is removed, any replacement thereof shall conform to the standards set forth in this Chapter.

8-8-8: NOTICE OF VIOLATION: Prior to the issuance of any citation for a violation of Section 8-8-3 of this Code, the Public Works Department of the City shall give notice in writing to all persons owning or controlling land abutting or adjoining a section of sidewalk where a mailbox exists in violation of this Chapter. The notice shall be personally served upon an adult residing upon said land and shall notify the person owning or controlling the land to remove the mailbox or bring it into conformity with the standards of this Chapter within thirty (30) days after receipt of the notice. (Ord. 3003, 4-23-15)

8-8-9: SIDEWALK SALES:

(A) Notwithstanding Sections 8-8-2 through and including and 8-8-4 of this Chapter Code, goods, merchandise, food and beverages may be sold or displayed from carts or other structures upon public sidewalks subject to the following restrictions and standards set forth in this section.

(B) Definition: For the purpose of this section, the term "downtown area" shall have the same meaning ascribed in Section 9-5-2, City Code.

(C) Sales in Downtown Area: Any licensed merchant or other person conducting a lawful business may place tables, racks, stands, carts or other structures upon a public sidewalk located within the downtown area for the purpose of selling or displaying goods, wares, merchandise, food or beverages, subject to the restrictions set forth in Section 8-8-9(E) of this Section.

(D) Sales in Other Areas: The City Council may, by resolution duly passed and adopted, declare a day or days during which licensed merchants or other persons conducting a lawful business may place tables, racks, stands, carts or other structures upon a public sidewalk located outside the downtown area for the purpose of selling or displaying goods, wares, merchandise, food or beverages, subject to the restrictions set forth in Section 8-8-9(E) of this Section.

(E) Standards: Any table, rack, stand, cart or other structure placed upon any public sidewalk as permitted by this section shall comply with the following regulations and restrictions:

- (1) All structures shall be placed parallel to the edge of the sidewalk furthest from the public street and at a distance no greater than four feet (4') from the back edge of the sidewalk.

- (2) No such structure shall project on or over or be located in any part of any public street or alley; nor shall any such structure rest upon the public sidewalk in any area where a public alley or private driveway exits into a public street.
- (3) No such structure shall be placed within fifteen feet (15') of any fire hydrant.
- (4) No such structure shall be placed within three feet (3') of any marked crosswalk, street light pole, utility pole, traffic sign pole, fire call box, police call box or other emergency facility, designated bus stop or designated loading or unloading zone.
- (5) No such structure shall have any spikes, decorations or protrusions which create unreasonable risk of bodily injury or harm to pedestrian; nor shall any cords, ropes, wires or other materials or devices of any kind or nature be placed across the public sidewalk or in a manner which would cause or create an unsafe or dangerous condition.
- (6) All goods, wares, merchandise, food or beverages shall be placed upon a table, rack, stand, cart, or other permitted structure and shall not be placed directly upon the public sidewalk.

(F) Sidewalk dining may be allowed on portions of a sidewalk adjacent to the restaurant providing the food. The tables and chairs must be placed as far away from the public street as possible. The tables and chairs must leave at least four feet (4') of walk way between the table and/or chairs and the edge of the sidewalk or other obstruction, such as a utility pole, fire hydrant, bus bench, or newspaper rack. The tables and chairs must be portable.  
(Ord. 2916, 02-28-13)

#### 8-8-10: NEWS RACKS, NEWS VENDING MACHINE AND NEWSSTANDS:

(A) Notwithstanding Sections 8-8-2 through and including 8-8-4 of this Chapter, news racks, news vending machines and newsstands may be installed, used or maintained upon public sidewalks subject to the following restrictions and standards:

(B) Definitions: For the purposes of this section a "news rack" is any structure, stand, platform, stall, box, rack, booth or other structure or device used for the distribution of newspapers, magazines or other printed news media.

(C) Encroachment on Public Streets Prohibited: No person shall install, use or maintain any news rack which projects onto, into or over any part of the roadway of any public street or alley, or which rests wholly or in part, upon, along or over any portion of such roadway.

(D) Interference with Public Uses Prohibited: No person shall install, use or maintain any news rack which in whole or in part rests upon, in or over any public sidewalk when such installation, use or maintenance endangers the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other government use, or when such news rack unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic, the ingress into or egress from any crosswalk, residence, place of business, or any legally parked or stopped vehicle, or the use of poles, posts, traffic signs or signals, hydrants, mailboxes, or other public structures or objects installed at said location.

(E) Standards: Any news rack which in whole or in part rests upon, in or over any sidewalk shall comply with the following standards:

- (1) No news rack may exceed fifty inches (50") in height, thirty inches (30") in width or two feet (2') in depth.
- (2) News racks may be placed only near a curb or adjacent to and parallel with the wall of a building adjoining the sidewalk or the edge of the sidewalk furthest from the public street. News racks placed near the curb shall be placed no less than twelve inches (12") nor more than eighteen inches (18") from the back edge of the curb; however, in locations not adjacent to a parking stall, news racks may be placed not less than three inches (3") from the back edge of the curb. News racks placed adjacent to the wall of a building or back edge of the sidewalk shall be placed not more than six inches (6") from such wall or edge of the sidewalk. No news rack may be placed or maintained on a sidewalk opposite another news rack.
- (3) No news rack may be chained, bolted or otherwise attached to any fire hydrant, pole, bench, receptacle or other public fixture.
- (4) News racks may be chained or otherwise attached to each other; however, no more than three (3) news racks may be joined together in this manner, and a space of no more than six inches (6") shall separate each news rack and a space of no less than eighteen inches (18") shall separate each group of three (3) news racks so attached.
- (5) No news rack, or group of attached news racks, shall weigh, in the aggregate, in excess of one hundred twenty-five (125) pounds when empty.
- (6) No news rack shall be placed, installed, used or maintained:
  - (a) Within three feet (3') of any marked crosswalk.

- (b) Within fifteen feet (15') of the curb return of any unmarked crosswalk.
- (c) Within three feet (3') of any street light pole, utility pole, fire hydrant, fire call box, police call box or other emergency facility.
- (d) Within three feet (3') of any driveway.
- (e) Within three feet (3') ahead of, and fifteen feet (15') to the rear of any sign marking a designated bus stop.
- (f) Within three feet (3') of any designated loading or unloading zone.
- (g) Within three feet (3') of any publicly-owned bench.
- (h) At any location whereby the clear space for the passage of pedestrians is reduced to less than five feet (5'); however, in the event the sidewalk is less than six feet (6') in width, then the clear space shall not be reduced to less than three feet (3').
- (i) Within three feet (3') of any display window abutting the sidewalk in a manner which impedes or interferes with the reasonable use of such window for display purposes.

(F) Advertising Limitations: No news rack shall be used for advertising signs for publicity purposes other than that dealing with the display, sale or purchase of the newspaper or news periodical sold therein.

(G) Maintenance: Each news rack shall be maintained in a clean, neat and attractive condition and in good repair at all times. No news rack may be painted in a garish or gaudy color or manner.

(H) Identification: Every person who places, maintains or operates a news rack upon the public sidewalk shall have his name, address and telephone number affixed thereto in a conspicuous place.

8-8-11: BUS STOP BENCHES: Notwithstanding Sections 8-8-3 and 8-8-4 of this Chapter, bus stop benches may be installed or placed upon public sidewalks subject to the restrictions and standards set forth in Sections 8-8-12 through 8-8-25.

8-8-12: DEFINITIONS: For the purposes of Sections 8-8-12 through 8-8-25 hereafter, the following terms shall have the meanings set forth below:



(A) The term "downtown area" shall have the same meaning ascribed in Section 9-5-2, City Code.

(B) The term "residential area" shall mean all real property within the City zoned RP, RP-A, RSC-1, R-1, R-2, R-2A, R-3, R-3A and P-B.

(C) The term "main bus route streets" shall mean "arterial or collector streets" as defined in Section 9-5-2, City Code, and shall also include the following streets within the City.

Sunnyside Road from Rollandet Avenue east to Hitt Road,

Elm Street from Yellowstone Avenue southeast to South Boulevard,

1st Street from Northgate Mile east to Woodruff Avenue,

Grandview Drive from Washburn east to North Skyline Drive,

North Skyline Drive from Pancheri Drive north to Broadway, and

South Boulevard from Sunnyside Road north to 1st Street.

(D) The term "dwelling" shall have the same meaning ascribed in the Zoning Ordinance of the City.

(E) The term "family" shall have the same meaning ascribed in the Zoning Ordinance of the City.

(F) The term "bus stop bench" shall be defined as a bench designed and intended for use by persons who use any bus service that provides transportation for the general public or any bus service operated by any governmental agency or any contractor of a governmental agency.

(G) The term "location" shall mean a site upon a public sidewalk which is within fifteen feet (15') of a designated public bus stop or designated bus stop of buses operated by a governmental agency or contractor of a governmental agency. (Ord. 2850, 11-16-10)

#### 8-8-13: PERMITS:

(A) Installation of Bus Benches Prohibited: No person shall install or place any bus stop bench upon any public sidewalk located within the City, except as provided in this section. Persons may install or place bus stop benches upon public sidewalks adjacent to streets in the downtown area of the City or adjacent to main bus route streets within the City only upon obtaining a permit from the City for each location at which a bus stop bench will be installed or placed.

(B) Application Fee: Any person who desires to obtain a bus stop bench permit shall file a written application with the City Clerk. The application shall state the name, address and telephone number of the person to whom the permit is to be used, the number of locations for which the permit is sought, and the street address of each such location. The number of benches at each location shall be limited to one (1) bench. Applications shall be accompanied by a non-refundable permit fee in an amount set from time to time by Resolution of the Council for each location for which the permit is sought. The application shall carry the written approval of the Chief of Police. No bus stop bench permit shall be issued without the approval of the City Council.

(C) Term; Extension of Permit to Additional Locations; Fee: Bus stop bench permits shall be valid only for the location and the calendar year for which they are issued and shall expire on December 31 of the year for which they are issued. If the holder of a valid bus stop bench permit desires to install benches at locations not covered by his or her existing permit, he shall apply in writing to the City Clerk to have the existing permit extended to cover additional locations. The application shall state the name, address, and telephone number of the permit holder, the number of the existing permit, the number of additional locations to be covered by the permit the street address of each such new location and the number of benches to be installed at each such new location added to the permit. The application shall be accompanied by a nonrefundable fee in an amount set from time to time by Resolution of the Council for each additional location to be covered by the permit. Upon approval of the application by the Chief of Police and the City Council, the permit holder's existing permit shall be extended to cover the additional locations.

(D) Permits Nontransferable: Bus stop bench permits shall not be transferable.

(E) Renewal; Fee: Bus stop bench permits may be renewed annually upon written request of the permit holder and payment of a nonrefundable renewal fee in an amount set from time to time by Resolution of the Council for each location covered by the permit. Requests for renewal must be filed with the City Clerk prior to the date on which the existing permit expires. Requests for renewal shall be subject to the approval of the Chief of Police and the City Council. Requests for renewal may be denied, in whole or in part, by the Chief of Police or the City Council if the permit holder has failed to comply with the provisions of this Section or if the Chief of Police disapproves any location covered by the permit for the reasons set forth in Section 8-8-18(c) of this Chapter.

(F) Failure to Renew Permit; Effect: Unless a written request for a renewal permit has been made, any bus stop bench installed or placed pursuant to a permit issued by the City shall be removed by the permit holder, at the permit holder's expense, not later than the expiration date of the permit. If the permit holder fails to comply with the requirements of this paragraph, the City may cause the bench or benches to be removed and shall charge the cost of such removal to the permit holder.

(G) Installation on sidewalks maintained by City: If a person desires to install a bus bench on a sidewalk maintained by the City of Idaho Falls, e.g. Sunnyside Road, the head of the department which maintains the sidewalk shall give written consent to the installation of

such bench. To reduce public maintenance costs, construction of pads for the benches or other measures may be required by the department. Such written consent shall accompany the application and be considered in the approval of the location by the Chief of Police and the Council.

(Ord. 2850, 11-16-10; Ord. 2964, 8-14-14; Ord. 3003, 4-23-15)

8-8-14:        **NUMBER OF LOCATIONS:** Except as otherwise provided in this Chapter, the total number of locations for which the City may issue bus stop bench permits, including renewal permits, shall not exceed sixty (60) in any one calendar year. Upon recommendation by the Chief of Police, the City Council may, by Resolution duly passed and adopted, increase the total number of locations for which such permits may be issued. (Ord. 2850, 11-16-10)

8-8-15:        **PERMIT NOT A PROPERTY RIGHT:** The issuance of any bus stop bench permit or any renewal permit shall not be construed to give the permit holder any vested interest in or right to use or occupy any public property within the City.

8-8-16:        **COMPLIANCE WITH CODE:** Bus stop bench permit holders shall comply with all provisions of this Chapter concerning the installation, location, maintenance and use of any bus stop bench upon public sidewalks within the City.

8-8-17:        **INDEMNIFICATION:** Bus stop bench permit holders shall indemnify and hold harmless the City, its agents, officials and employees from and against any and all claims for personal injury or for any loss or damage to property arising from the installation, placement, location or maintenance of any bus stop bench for which a permit is issued.

8-8-18:        **STANDARDS:**

(A)    Any bus stop bench installed or placed upon any public sidewalk as permitted by this Chapter shall comply with the regulations and standards set forth in this Section.

(B)    No bus stop bench shall exceed eighty-four inches (84") in length, forty inches (40") in height or twenty-four inches (24") in depth. Any bus stop bench installed or placed in a "clear view zone" as defined in the Zoning Ordinance of the City, now in force or as subsequently amended, shall not exceed two feet (2') in height.

(C)    Bus stop benches may be installed upon public sidewalks adjacent to streets in the downtown area of the City or adjacent to main bus route streets within the City only at locations approved by the Chief of Police. The Chief of Police shall have authority to disapprove any location that lies within any residential area of the City, whether or not such location is on a public sidewalk adjacent to a main bus route street. The Chief of Police also shall have authority to disapprove any location where the installation of a bus stop bench would unreasonably impede or interfere with the flow of pedestrian or vehicular traffic, endanger the safety of persons or property, or otherwise fail to comply with the provisions of this Section.

(D) No bus stop bench shall be installed upon any public sidewalk adjoining the front yard or side yard facing a street of any real property in the City on which a one-family or two-family dwelling is situated unless such owner or owners of the real property are notified of the request for installation of such bench at least fifteen (15) days prior to filing of the application with the City Clerk. A copy of the notice to the property owner and proof of receipt shall be presented to the City Clerk with his application.

(E) No bus stop bench shall be installed or placed in any manner that endangers the safety of persons or property, or at any location or site that is used for public utility purposes or other governmental use, or when such bench unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic, the ingress into or egress from any crosswalk, residence, place of business, or any legally parked or stopped vehicle or the use of any poles, posts, traffic signs or signals, hydrants, mailboxes, or other public structures or objects installed at said location.

(F) All bus stop benches shall be placed parallel to and along the inward edge of the sidewalk. Bus stop benches shall be located so that there is a clear space for pedestrian traffic of at least five feet (5') between the front edge of the bench and the curb line; however, if the sidewalk is less than seven feet (7') in width, the clear space may be reduced to not less than three feet (3').

(G) Bus stop benches shall be located within fifteen feet (15') of a designated public bus stop or designated bus stop for buses operated by a governmental agency or a contractor of a governmental agency.

(H) No bus stop bench shall be placed within fifteen feet (15') of any fire hydrant.

(I) No bus stop bench shall be placed within three feet (3') of any marked crosswalk, street light pole, utility pole, traffic sign pole, fire call box, police call box or other emergency facility, or designated loading or unloading zone.

(J) No bus stop bench shall be placed within three feet (3') of any display window abutting the sidewalk in a manner that impedes or interferes with the reasonable use of such window for display purposes.

(K) No bus stop bench shall project on or over or be located in any part of any public street or alley; nor shall any such bench rest upon the public sidewalk in any area where a public alley or private driveway exists into a public street.

(L) No bus stop bench shall have any spikes, decorations or protrusions which create an unreasonable risk of bodily injury or harm to pedestrians.

(M) No bus stop shall be affixed, anchored, bolted or otherwise attached to the public sidewalk; nor shall any such bench be chained, bolted or otherwise attached to any fire hydrant, pole, receptacle or other public fixture. (Ord. 2850, 11-16-10)

8-8-19:       **MAINTENANCE:** Each bus stop bench shall be maintained by its permit holder, at the permit holder's own expense, in a safe, clean, neat and attractive condition. Such maintenance shall include, but not be limited to, snow removal from the area in which each such bench is located. No bus stop bench may be painted in a garish or gaudy color or manner.

8-8-20:       **IDENTIFICATION:** The name, address and telephone number of the permit holder and the permit number shall be affixed in a conspicuous place to each bus stop bench.

8-8-21:       **ADVERTISING:** Bus stop benches may be used by the permit holder for advertising signs or publicity purposes. Such signs shall be securely fastened to the bench. No advertising sign, advertising or publicity device or any other attachment shall extend beyond the dimensional requirements set forth in Section 8-8-18.

8-8-22:       **NOTICE OF VIOLATION:** The chief of Police shall give notice in writing to the permit holder and owner, if known, of any bus stop bench that exists in violation of this Chapter. The notice shall be served by depositing it in the United States mail, first class postage prepaid, certified mail, return receipt requested, and addressed to the permit holder at the address shown on the permit or to the owner at the owner's last known address. The notice shall request the permit holder and owner of the bus stop bench remove such bench or bring it into conformity with the standards of this section within thirty (30) days of receipt of the notice. The notice shall be deemed received upon its deposit in the United States mail in the manner set forth in this section. Failure of a permit holder to comply with such notice shall be grounds for revocation of the permit. If any bus stop bench exists in violation of the provisions of this section and its permit holder or owner is unknown to the Police, such bench shall be deemed to be abandoned property and the Chief of Police shall have authority to confiscate such bench and to cause its immediate removal.

8-8-23:       **REVOCATION OF PERMIT:** Upon complaint of the Chief of Police and upon thirty (30) days written notice to the holder of a bus stop bench permit, the City Council shall have the authority to revoke such permit, for all locations covered by the permit, for violations of the provisions of this Chapter or any regulations issued in connection therewith, or for any other good and sufficient cause. The decision of the City Council in the matter of such revocations shall be final. Any revoked permit shall be immediately surrendered to the City Clerk, and the permit holder shall, at his or her own expense, immediately remove benches from all locations for which the permit was revoked.

8-8-24:       **EMERGENCY REMOVAL OF BENCHES:** The Police and the Fire Departments shall have the authority, without prior notice to the permit holder or owner, to cause the removal of any bus stop bench which wholly or in part rests on or projects over any part of a public street or alley, or which interferes with or impedes access to any fire hydrant, fire call box, police call box, utility pole or post, or other public fixture, or which unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic, or which creates any unreasonable risk of bodily injury or harm to persons or damage to property. (Ord. 3003, 04-23-15)

8-8-25:       DISCLAIMER:   Nothing in this Section, including without limitation the approval of any bus stop bench location and the issuance of any permit as provided in this Chapter shall be construed as imposing upon the City, its agents, officials or employees any private duty or liability for any injury to persons, or for any loss or damage to property arising from the installation, placement or maintenance of any bus stop bench. Neither shall this Section be construed to create any liability or cause of action against the City, its agents, officials or employees for any injury to persons or for any loss or damage to property arising from the failure of any bus stop bench permit holder or owner to meet the standards of this Chapter.

## **CHAPTER 9 COMMUNITY FORESTRY**

### **SECTION:**

8-9-1	Purpose
8-9-2	Definitions
8-9-3	Community Forester
8-9-4	Establishment of a Shade Tree Committee
8-9-5	Term of Office
8-9-6	Operation of the Shade Tree Committee
8-9-7	Duties and Responsibilities
8-9-8	Species of Trees Permitted
8-9-9	Utilities
8-9-10	Responsibilities for Private Trees
8-9-11	Licensing of Private Tree Service Companies
8-9-12	Permit Required for Pruning of Public Trees
8-9-13	Regulations for Planting Street Trees
8-9-14	Trees and Shrubs Overhanging Public Property
8-9-15	Abuse of Public Trees
8-9-16	Street Tree Care
8-9-17	Tree Topping
8-9-18	Public Nuisance Declared
8-9-19	Abatement of Nuisance
8-9-20	Interference With City Forester
8-9-21	Adoption of ANSI A300 and ANSI Z133.1
8-9-22	
8-9-23	Penalty for Violations

8-9-1:       **PURPOSE:** The purpose of this Chapter is to promote and protect the public health, safety and general welfare by providing for the regulation of the planting and maintenance, and removal of trees, shrubs and other plants within the City of Idaho Falls. (Ord. 2207, 8-8-96; Ord. 2486, 3-27-03; Ord. 2877, 8-11-11; Ord. 2968, 9-10-14)

8-9-2:       **DEFINITIONS:**

(A) Terms used in this Chapter shall have the meanings ascribed below:

1. **ANSI A300:** That certain standard tree, shrub and other woody plant maintenance standard practice as set forth in ANSI A300 (Part I)—2001, as published by the American National Standards Institute, Inc., May 22, 2001 Edition.
2. **ANSI Z133.1:** That certain safety standard regarding the planting and maintenance of trees in proximity to utility lines as published by the American National Standards Institute, Inc. May 22, 2001 Edition.

3. CITY FOREST: The sum of all trees and shrubs within the City.
4. CITY FORESTER: The person appointed by the Director to carry out the duties and functions set out in the Chapter.
5. CRITICAL ROOT ZONE: The area under a tree extending from the base of a tree in all directions to a line ten (10) feet outside of the drip-line.
6. DIRECTOR: The duly appointed Director of City Parks and Recreation Department or designee.
7. PARK TREE: Any public tree, shrub, bush and woody vegetation located in or upon any public park owned by the City, but excluding trees in the public right-of-way.
8. PERSON: Any individual, firm, partnership, corporation, association, company, or other governmental entity or organization of any kind.
9. PRIVATE TREE: Any tree that is not a public tree.
10. PRIVATE TREE SERVICE COMPANY: Any company or person engaged in the business of tree pruning, trimming, removal within or without the City, whose gross receipts are more than five hundred dollars (\$500) in any calendar year.
11. PUBLIC RIGHT-OF-WAY: Improved or unimproved public property owned by, dedicated to, or deeded to, the public or the public's use for the purpose of providing vehicular, pedestrian and other public use. Such public property includes, but is not limited to, streets, alleys, sidewalks, public utility.
12. PUBLIC TREE: Any tree located upon public property owned or managed by the City, including a street tree.
13. SHRUB: A woody perennial plant, branched at or near the base and which at maturity is expected to grow less than fifteen (15) feet in height.
14. STREET TREE: Any tree, shrub, bush, and all other woody vegetation whose critical root zone is located on or encroaches into any public right-of-way or whose branches overhang any public right-of-way owned or managed by the City, or an adjacent property owner.
15. TOPPING: The severe cutting back of limbs to stubs larger than three (3) inches in diameter within the tree's crown or the removal of the top part (trunk and limbs) of a coniferous tree, thereby removing the normal canopy and disfiguring the tree.
16. TREE: A woody and perennial plant, usually having one main stem or trunk and many branches and which, at maturity is expected to exceed fifteen (15) feet in height and two (2) inches in diameter. The failure to achieve such height at maturity shall not preclude



its consideration as a tree. (Ord. 2207, 8-8-96; Ord. 2486, 3-27-03; Ord. 2738, 2-14-08; Ord. 2877, 8-11-11; Ord. 2968, 9-10-14; Ord. 3003, 4-23-15; Ord. 3007, 5-25-15)

8-9-3:           CITY FORESTER: The Director may appoint a person to serve as City Forester. The City Forester shall have such duties and perform such functions as shall be prescribed herein and as required by the Director of Parks and Recreation. The City Forester is hereby authorized to:

(A)     Direct, manage, supervise and control the City street tree and park tree program for the planting, removal, maintenance and protection of all public trees and shrubs on all public areas and to supervise and assist the Parks and Recreation Department personnel in the planting, removal, maintenance and protection of said trees and shrubs;

(B)     To guard all public and private trees and shrubs within the City so as to prevent the spread of disease or pest and to eliminate dangerous conditions which may affect the life, health or safety of person or property. (Ord. 2207, 8-8-96; Ord. 2486, 3-27-03; Ord. 2738, 2-14-08; Ord. 2877, 8-11-11; Ord. 2968, 9-10-14; Ord. 3003, 4-23-15)

8-9-4:           ESTABLISHMENT OF A SHADE TREE COMMITTEE: There is hereby created and established a Shade Tree Committee for the City, which shall consist of seven members who reside within the City. The Shade Tree Committee shall be comprised of six (6) at-large members and one member (1) who shall be a member of the Parks and Recreation Commission. Members of the Committee shall be nominated by the Mayor and confirmed by a majority of the members of the Council. (Ord. 2207, 8-8-96) (Ord. 2403, 1-11-01); (Ord., 2486, 3-27-03; Ord. 2738, 2-14-08; Ord. 2826, 11-12-09; Ord. 2968, 9-10-14)

8-9-5:           TERM OF OFFICE: The term of the members of the Shade Tree Committee shall be three (3) years. In the event that a vacancy shall occur during the term of any member, his or her successor shall be appointed for the unexpired portion of the term. Members of the Committee shall serve at the pleasure of the Mayor and Council and may be removed for good cause at the sole discretion of the Council, including but not limited to failure to regularly attend scheduled meetings of the Committee or other dereliction of duty. (Ord. 2207, 8-8-96) (Ord. 2403, 1-11-01); (Ord. 2486, 3-27-03; Ord. 2738, 2-14-08; Ord. 2877, 8-11-11; Ord. 2968, 9-10-14)

8-9-6:           OPERATION OF THE SHADE TREE COMMITTEE: The Committee shall choose its own officers, make its own rules and regulations and keep minutes of its proceedings. A majority of the members shall constitute a quorum for the transaction of business. (Ord. 2207, 8-8-96; Ord. 2486, 3-27-03; Ord. 2738, 2-14-08; Ord. 2968, 9-10-14)

8-9-7:           DUTIES AND RESPONSIBILITIES: The Shade Tree Committee shall provide advice to the Director, Mayor, City Forester and Council as to the preservation, protection and management of the community forest of Idaho Falls, in accordance with the intent and purpose of this Chapter. The Committee shall have the following duties and responsibilities:

(A) Assist the City Forester in encouraging landscaping installation and maintenance on private property by providing information on the value of landscaping and the proper planting and care of trees and other vegetation;

(B) Recommend policies and procedures to identify, mark, publicize and preserve historic and notable trees on both public and private property;

(C) Assist the City Forester in promoting appreciation of trees and the City Forest through annual Arbor Day observances and other activities;

(D) Encourage improvement of the community forest through planning and policy development;

(E) Assist City Departments and Divisions in every way possible to enhance the City Forest;

(F) Enhance opportunities for obtaining monetary funds for tree purchases, related supplies and community forestry activities through local and federal assistantship grants and donations;

(G) Serve as an advocate of the City's Forest. (Ord. 2207, 8-8-96; Ord. 2486, 3-27-03; Ord. 2738, 2-14-08; Ord. 2877, 8-11-11; Ord. 2968, 9-10-14; Ord. 3003, 4-23-15)

8-9-8: SPECIES OF TREES PERMITTED:

It shall be unlawful to plant any tree within any public right-of-way or planting median or immediately adjacent to a public tree except the following species of trees:

*Small Trees*

Cherry, Canada Red	Prunus virginiana 'Shubertii'
Cherry, Sargent	Prunus sargentii
Crabapple, (persistent or fruitless varieties)	Malus spp.'Spring Snow/Thunderchild
Elm, Camperdown	Ulmus glabra 'Camperdownii'
Hawthorne, Black	Crateagus douglasii'
Hawthorne, Snowbird	Crateagus mordenesis
Hawthorne, Washington	Crateagus phaenopyrum
Hornbeam, American	Carpinus, caroliniana
Lilac, Japanese Tree	Syringa reticulata
Maple, Amur	Acer ginnala
Maple, Bigtooth	Acer grandidentatum
Maple, Hedge	Acer campestre
Mayday	Prunus padus
Pear, Callery (varieties)	Pyrus calleryana 'Cleveland/Princess'
Plum, Newport	Prunus cerasifera 'Newport'
Serviceberry, Saskatoon	Amelanchier alnifolia

*Medium Trees*

Amur Cork Tree	Phellodendron amurense
Beech, European	Fagus sylvatica
Birch, Heritage	Betula nigra 'Heritage'
Catalpa, Northern	Catalpa speciosa
Elm, Smoothleaf (varieties)	Ulmus carpinifolia 'Homestead/Frontier'
Hackberry	Celtis occidentalis
Honeylocust, (thornless varieties)	Gleditsia triacanthos var. inermis
Linden, American (varieties)	Tilia americana
Linden, Littleleaf	Tilia cordata
Linden, Corinthian	Tilia cordata 'Corinthian'
Linden, Littleleaf	Tilia cordata
Maple, Norway (varieties)	Acer platanoides
Maple, Red (varieties)	Acer rubrum
Oak, Columnar English	Quercus robur Fastigiata
Walnut, English	Juglans regia
Zelkova	Zelkova serrata

*Large Trees*

Coffeetree, Kentucky	Gymnocladus dioica
Honeylocust, Thornless (native species)	Gleditsia triacanthos var. inermis
Horsechestnut	Aesculus hippocastanum
Linden, American (native species)	Tilia americana
Maple, Norway (native species)	Acer platanoides
Oak, Bur	Quercus macrocarpa
Oak, Bur/Gambel Hybrid	Quercus macrocarpa x gambelii
Oak, Bur/English Hybrid	Quercus macrocarpa x robur

Other species may be planted only with written permission from the Parks and Recreation Department. (Ord. 2207, 8-8-96); (Ord. 2486, 3-27-03; Ord. 2738, 2-14-08; Ord. 2877, 8-11-11; Ord. 3003, 4-23-15)

8-9-9: UTILITIES:

(A) It shall be unlawful for any person to plant any public or private tree under or within twenty (20) lateral feet of any overhead utility wire, or over or within five (5) lateral feet of any underground water line, sewer line, electric transmission or distribution line or other utility except the following species of trees:

Cherry, Canada Red	Prunus virginiana 'Shubert'
Crabapple, (persistent or fruitless varieties)	Malus spp.
Elm, Camperdown	Ulmus blabra 'Camperdownii'
Honeylocust, Imperia	Gleditsia triacanthos var. inermis 'Imperial'

Lilac, Japanese Tree	<i>Syringa reticulata</i>
Maple, Amur	<i>Acer ginnala</i>
Mayday	<i>Prunus padus</i>
Mountain Ash, European	<i>Sorbus aucuparia</i>
Plum, Newport	<i>Prunus cerasifera</i> ‘Newport’
Serviceberry, Saskatoon	<i>Amelanchier alnifolia</i>
Sumac, Staghorn	<i>Rhus typhina</i>

Other species may be planted only with written permission from the Parks and Recreation Department.

(B) It shall be unlawful to plant any public or private tree in any location in any manner which does not comply with the safety standards for planting and maintenance of trees in proximity to public utilities, as set forth in ANSI Z133.1.

(C) The City will not be responsible for damage to any tree or shrub located within a utility easement as a result of the operation or maintenance of City utility lines. Damage to any public utility system caused by trees improperly located within the public right-of-way or easement will be repaired at the owner's expense. (Ord. 2207, 8-8-96; Ord. 2486, 3-27-03; Ord. 2738, 2-14-08; Ord. 2877, 8-11-11; Ord. 2968, 9-10-14; Ord. 3003, 4-23-15)

#### 8-9-10: RESPONSIBILITIES FOR PRIVATE TREES:

(A) It shall be unlawful for any person owning a private tree or in control of a private tree to refuse or fail to take the following actions within a reasonable time after being directed to do so by the City Forester:

- (1) Remove, prune, or re prune any tree located on such person's private property in a manner that removes, abates or otherwise lessens the likelihood of or resolves any pest infestation, dangerous condition or circumstance located within such tree, the existence of which constitutes a public nuisance, as defined in Section 8-9-18 of this Code.
- (2) Remove, prune, or re prune any private tree located on such person's real property in a manner that provides for vertical clearance of the branches of such tree to a height of not less than eight feet (8') above any public sidewalk or not less than fifteen feet (15') above any public street or alley.
- (3) Remove, control or abate any pest investing or otherwise located in or upon any private tree located upon the owner's private real property.

- (4) Remove and properly dispose of all branches, twigs, leaves or other debris deposited upon public property by or at the direction of any person pruning, trimming or removing such private tree.

(Ord. 2738, 2-14-08; Ord. 2877, 8-11-11; Ord. 2968, 9-10-14)

8-9-11:           LICENSING OF PRIVATE TREE SERVICE COMPANIES:

(A)     It shall be unlawful for any private tree service company to prune, trim or otherwise remove any public or private tree located within the City without having a valid, current license to engage in such business.

- (1)     Licenses shall be issued by the City Clerk upon payment by the applicant of a licensing fee in an amount set from time to time by Resolution of Council, and satisfaction by the applicant of the licensing requirements set forth below. Each license shall be issued for a period of one (1) year and shall not be transferrable.
- (2)     Prior to the issuance of any license, the applicant shall satisfy the following requirements:
  - (a)     Provide a copy of a certificate of insurance evidencing the applicant's current coverage of a commercial general liability policy, having limits of not less than a combined single limit of five hundred thousand dollars (\$500,000).
  - (b)     Provide a copy of a certificate of insurance evidencing current Idaho workers' compensation insurance, having limits not less than the Idaho statutory limits.
  - (c)     Delivery of an affidavit signed by the applicant certifying that the applicant has within its employ or has contracted with an arborist certified by the International Society of Arboriculture ("ISA") for the term of the license.
- (3)     Such license may be revoked by the City Council upon satisfactory proof of any of the following reasons:
  - (a)     The removal, pruning or trimming of any public or private tree within the City by the licensee at any time while the licensee does not have an ISA certified arborist on staff or has not contracted with a certified arborist.
  - (b)     A removal, trimming or pruning of any tree by the licensee or any employee of the licensee who is not acting under the

direction or control of an ISA certified arborist, and pursuant to a written work plan approved by an ISA certified arborist.

- (c) The removal, trimming or pruning of any public or private tree by the licensee or any person employed or acting under the licensee's direction or control, in any manner which violates the provisions of this Chapter.
- (d) Failure of the licensee to maintain the liability insurance or worker's compensation insurance required by this Chapter.
- (e) Failure to keep current any condition of licensure.
- (f) A violation of this Chapter.
- (g) Providing false or inaccurate information relative to licensure.

(B) Exemptions from licensure.

(1) Unless a person or company is a Private Tree Service Company, as defined in this Chapter, no license shall be required of a person or company:

- (a) for occasional and incidental pruning of broken branches, trimming of ornamental shrubs, removal of tree branches or shrub branches that obstruct or interfere with paths, walkways, or gardens, and similar non-invasive care of trees and shrubs incidental to such person's or company's primary business; or
- (b) where emergency tree or shrub trimming, pruning, or removal is reasonably necessary to prevent or lessen irreparable or serious damage to human life or property within five (5) days immediately following a storm event, accident, tree failure, or the like which causes the emergency.
- (c) tree pruning below a fifteen foot (15') height, as measured from the base of the tree pruned. (Ord. 2738, 2-14-08; Ord. 2877, 8-11-11; Ord. 2968, 9-10-14)

**8-9-12: PERMIT REQUIRED FOR PRUNING OF PUBLIC TREES:**

(A) Unless exempt as provided by this Chapter, it shall be unlawful for any person to perform or caused to be performed any of the following acts without having first obtained a permit from the Director or the Community Forester:

- (1) Prune, cut or remove any portion of a public tree.

(2) Attach any object to a public tree in any manner which is reasonably likely to harm or materially injure the bark of such public tree.

(3) Cut, damage, or destroy the bark of any public tree.

(4) Dig, trench, excavate or place any hazardous, chemical or substance within the critical root zone of any public tree.

(B) The Director or City Forester may, as a condition for the issuance of such permit, require the applicant to post a cash bond or other security acceptable to the Director or City Forester, the condition for which is the permittee's removal of the stump of said tree within thirty (30) days of the date of the issuance of such permit. (Ord. 2738, 2-14-08; Ord. 2877, 8-11-11; Ord. 2968, 9-10-14)

8-9-13: REGULATIONS FOR PLANTING STREET TREES: Street trees shall be classified in accordance with the three (3) species size classes listed in this Chapter. Street trees shall not be planted closer together than the following: small trees, twenty feet (20'); medium trees, thirty feet (30'); large trees, forty feet (40'). No trees may be planted closer to the backside of any curb or the nearest edge of any sidewalk than the following: small trees, two feet (2'); medium trees, three feet (3'); and large trees, four feet (4'). All trees planted shall follow the Clear View Section of the City's Zoning Ordinance, Ordinance No. 1941, Sections 4-7. All distances shall be measured from the center of the tree trunk at ground level. (Ord. 2207, 8-8-96; Ord. 2486, 3-27-03; Ord. 2738, 2-14-08; Ord. 2877, 8-11-11; Ord. 2968, 9-10-14)

8-9-14: TREES AND SHRUBS OVERHANGING PUBLIC PROPERTY: All owners, or persons in control of private real property upon which a street tree or shrub is growing, shall remove or trim, at his or her expense, all limbs or foliage which overhang or project into any public street, sidewalk, alley or easement and which interfere with public travel or use of such public way or easement or which do not satisfy the requirements of the City Zoning Ordinance entitled "Clear View of Intersecting Streets and Ways." All trees and shrubs planted shall follow the Clear View Section of the City's Zoning Ordinance, Ordinance No. 1941, Sections 4-7. Street trees and shrubs shall be trimmed from the ground level to at least fifteen feet (15') above any public street, public easement or alley, or to at least eight feet (8') above the curb and sidewalk. (Ord. 2207, 8-8-96; Ord. 2486, 3-27-03; Ord. 2738, 2-14-08; Ord. 2877, 8-11-11; Ord. 2968, 9-10-14)

8-9-15: ABUSE OF PUBLIC TREES AND SHRUBS:

(A) Unless authorized by an appropriate public officer, it shall be unlawful for any person to:

(1) injure, deface, disfigure or destroy any public tree;

(2) permit any animal under his or her care or control to injure any public tree or shrub;

(3) cause any fire to injure any portion of any public tree or shrub;

- (4) cause any toxic chemical to be applied to, seep, drain or be emptied on or about any public tree or shrub;
- (5) attach any device or structure to or on public trees, in a manner which harms or which is reasonably likely to cause harm a public tree;
- (6) injure, destroy, to cut or pick any flower or ornamental plant growing, standing or being on public property;
- (7) make or cause excavations in the soil near roots of public trees unless appropriate measures are taken to prevent exposed soil from drying out;
- (8) damage the roots of a public tree by compacting or filling on or around the base of the tree; or
- (9) to top, prune or trim any public tree, except in accordance with the provisions of ANSI A300.

(B) Nothing herein shall prevent or prohibit the pruning, removal, treatment, care or maintenance of any public tree or shrub, provided such work complies with the provisions of ANSI A300. (Ord. 2486, 3-27-03; Ord. 2738, 2-14-08; Ord. 2968, 9-10-14)

8-9-16: STREET TREE CARE: The Department of Parks and Recreation shall have the right to remove, trim, destroy and control all street trees which are planted, grown or maintained in violation of the provisions of this Chapter. The Department of Parks and Recreation shall have the right to plant, prune, maintain and remove street trees within the lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds. (Ord. 2207, 8-8-96; Ord. 2486, 3-27-03; Ord. 2738, 2-14-08; Ord. 3003, 4-23-15)

8-9-17: TREE TOPPING: It shall be unlawful for any person to prune or top any public tree except in accordance with ANSI A300. (Ord. 2207, 8-8-96; Ord. 2486, 3-27-03; Ord. 2738, 2-14-08)

#### 8-9-18: PUBLIC NUISANCE DECLARED:

(A) The City hereby declares the following actions, practices or objects to be a public nuisance:

- (1) Any living or standing private or public elm tree or part thereof infected with the Dutch elm disease fungus *Ceratocystis ulmi* (Buisman) or which harbors any of the elm bark beetles *Scolytus multistriatus* (Marsham) or *Hylurgopinus rufipes* (Eichhoff).
- (2) Any public or private dead elm tree or part thereof, including logs, branches, stumps, firewood or other elm material not buried, burned, sprayed with an effective elm bark beetle-destroying insecticide, or from which the bark has not been removed.



- (3) The cultivation, maintenance or allowing to grow of any private or public tree which harbors any insect, disease or infestation by any living creature which poses a threat to the health or safety of any other public or private tree within the City or which poses a health or safety threat to any person or property.
- (4) Any public or private tree infested by any insect, pest or disease which is determined by the City Forester to pose a threat to the health of any other public or private tree.
- (5) Any public or private tree, the roots of which are growing beneath a public sidewalk and which cause a public hazard to the safe and efficient pedestrian travel upon such sidewalk.
- (6) Any public tree planted, growing or maintained in violation of the provisions of this Chapter. (Ord. 2486, 3-27-03; Ord. 2738, 2-14-08; Ord. 2877, 8-11-11; Ord. 2968, 9-10-14)

#### 8-9-19: ABATEMENT OF NUISANCE:

(A) Any person who fails to commence the abatement of any nuisance defined by this Section within fifteen (15) days after receiving written notice from the City, or who fails to diligently prosecute and complete the abatement of such nuisance thirty (30) days after the delivery of such notice, shall be guilty of an infraction. Such notice shall be personally served upon any occupant, if any, by posting a notice conspicuously on the property, if a structure capable of being occupied exists on the property, wherein the nuisance is located, and by serving a copy of such notice by United States mail, postage prepaid, to the owner of the property at the address listed upon the real property assessment rolls of Bonneville County. Such notice shall be deemed to be delivered upon its physical delivery and deposit into the United States mail, as set forth above.

(B) If the owner or occupant given notice fails to abate the nuisance within the time specified in the notice, the City may order the abatement of the nuisance and cause a Notice of Special Assessment to be mailed to the owner of the property in the manner set forth in subsection (A) of this Section. The Notice of Special Assessment shall state the amount to be assessed on account of the costs of abating the nuisance, the name and record address of the owner of the property to be assessed, and the legal description of such property. Such notice shall also state that, if the assessment is not paid within thirty (30) days, the assessment will be placed on the real property tax rolls and will become a lien against the property, in accordance with Idaho Code. (Ord. 2486, 3-27-03; Ord. 2738, 2-14-08; Ord. 2877, 8-11-11; Ord. 2968, 9-10-14)

8-9-20: INTERFERENCE WITH CITY FORESTER: It shall be unlawful for any person to prevent, delay or interfere with the City Forester, or his or her agents while they are planting, cultivating, mulching, pruning, spraying or removing any street trees, park trees, or trees on public property, as authorized in this Chapter. (Ord. 2968, 9-10-14)

8-9-21: ADOPTION OF ANSI A300 and ANSI Z133.1:

(A)(1) There is hereby adopted as an official code for the maintenance of trees, shrubs and other woody plants that certain standard maintenance practice as published in ANSI Standard A300 (Part I)-2001, as published by the American National Standards Institute, Inc. and approved on May 22, 2001. (2) There is hereby adopted as an official code, that certain safety standard for planting and maintenance of trees in proximity to utility lines, known as ANSI Z133.1, as published by the American National Standards Institute, Inc., May 22, 2001 Edition. (3) One (1) copy of ANSI A300 and of ANSI Z133.1 shall be filed with and maintained in the office of the City Clerk, for use and examination by the public. (Ord. 2486, 3-27-03; Ord. 2738, 2-14-08; Ord. 2892, 02-02-12; Ord. 2968, 9-10-14)

8-9-22: It shall be unlawful for any person or licensed tree company to perform maintenance of trees not in accordance with ANSI A300. (Ord. 2486, 3-27-03; Ord. 2738, 2-14-08; Ord. 2892, 02-02-12; Ord. 2968, 9-10-14)

8-9-23: PENALTY FOR VIOLATIONS: Any person, entity or licensed tree company who violates any portion of this Chapter shall be guilty of an infraction, with each violation subject to an infraction fine in an amount set from time to time by Resolution of Council. Each tree that is maintained not in accordance with ANSI A300 shall constitute a separate violation of this Chapter, punishable by an infraction. (Ord. 2964, 8-14-14; Ord. 2968, 9-10-14)

## **CHAPTER 10**

### **MAINTENANCE AND CONSTRUCTION OF SIDEWALKS AND CURBS**

#### **SECTION:**

- 8-10-1: Duty of Property Owners
- 8-10-2: Order for Construction or Maintenance
- 8-10-3: Special Assessment
- 8-10-4: Construction Specifications
- 8-10-5: Permit for Trap Doors
- 8-10-6: Openings in Sidewalks
- 8-10-7: Coverings Upon Sidewalks
- 8-10-8: Sidewalk, Hail, Snow, Sleet and/or Ice Removal Required
- 8-10-9: Obstruction of a City Sidewalk, Street, Easement, Right-of-Way, or Other Public Way with Snow or Ice is Prohibited
- 8-10-10: Penalties

8-10-1: **DUTY OF PROPERTY OWNERS:** Every person who owns real property within the City shall remove any snow, ice and other obstruction or dangerous condition upon any sidewalk, curb and gutter abutting his or her property.

8-10-2: **ORDER FOR CONSTRUCTION OR MAINTENANCE:** The Public Works Department may order any person who fails to perform his or her duty under the preceding section upon a finding that such sidewalk, curb and gutter have not been constructed or maintained in accordance with the provisions of this Chapter. Upon the issuance of such order, the Public Works Department shall serve a notice advising the owner of such property of his violation of this Chapter. The notice shall be served upon the owner by depositing the same into the United States mail, certified mail, return receipt requested, postage prepaid and addressed to the owner at the last known address or address shown on the assessment rolls of Bonneville County. Such notice shall advise the owner that if the sidewalk and curb and gutter are not installed, or maintained in accordance with the provisions of this Chapter or as otherwise required by this Code within twenty (20) days after the date of such notice, the City may order that such work be accomplished and the costs thereof be assessed against the real property adjacent to such sidewalk and curb and gutter. (Ord. 3003, 4-23-15)

8-10-3: **SPECIAL ASSESSMENT:** In the event any property owner fails to install or maintain the sidewalk and curb and gutter adjacent to his or her property within twenty (20) days after a notice is mailed to him in accordance with the preceding Section, the City Council may cause the work to be accomplished and charge the reasonable cost therefor against the owner of such property. Upon completion of the work, the City Council shall send a Notice of Assessment to the property owner advising him or her of the amount of the costs incurred in performing such work and advising the owner that if such amount is not paid within thirty (30) days after the date of such notice a special assessment will be made against such property in the manner permitted by law, and that twenty-five percent (25%) of the amount thereof will be added to such amounts as a penalty. Such notice shall be mailed to the property owner in the

manner set forth in the preceding section. In the event the property owner fails to pay such amount prior to expiration of thirty (30) days from the date the notice was mailed, the City Engineer shall certify to the City Council the amount of such costs incurred, and the Council may then order the City Treasurer to cause a special assessment to be levied and assessed against the property in the amount of such costs, together with the twenty-five percent (25%) penalty, in the manner set forth in Idaho Code Section 50-1008.

8-10-4:       **CONSTRUCTION SPECIFICATIONS:** The construction of all sidewalks and curbs and gutters shall be in accordance with the City Standard Drawings and Engineering Specifications.

8-10-5:       **PERMIT FOR TRAP DOORS:** It shall be unlawful to construct, maintain or operate any trap door, opening, grating or other opening within or upon a public sidewalk, without a permit issued by the Council.

8-10-6:       **OPENINGS IN SIDEWALKS:** It shall be unlawful for any person to fail or neglect to maintain any trap door, opening or grating approved by the Council, or to fail or neglect to keep the same securely closed while any doors covering the same are not in use, or to take all reasonable and necessary safety precautions to prevent harm and injury to person or property. All openings for elevators, coal chutes, or service entrances or openings of any kind within a public sidewalk shall be constructed and installed in such manner as to prevent entry of storm waters or floods from the street or sidewalk.

8-10-7:       **COVERINGS UPON SIDEWALKS:** All sidewalk doors, coal chutes and coverings and supports therefor shall be made of steel or cast iron, shall be placed flush with the sidewalk surface, shall have a corrugated surface or other finish that will prevent slippage thereupon, and shall be so constructed as to support a load of not less than two hundred (200) pounds per square foot.

8-10-8       **SIDEWALK, HAIL, SNOW, SLEET AND/OR ICE REMOVAL REQUIRED.**

(A) Definitions:

*Agent.* Any person under a legal or contractual obligation to remove hail, snow, sleet and/or ice on a Sidewalk for an owner or lessee of property within the City, whether or not for compensation.

*Precipitation Event.* Any product of the condensation of atmospheric water vapor (including hail, snow, sleet, and ice) that falls under gravity within City limits, as determined by the National Weather Service Station at the Idaho Falls Regional Airport.

*Sidewalk.* Any concrete, asphaltic paving or brick material adjacent to a City street, easement, right-of-way or other public way, whether within a public right-of-way or on private property, designated and/or used by pedestrians for travel.

(B)     Duty to Remove Hail, Snow, Sleet and/or Ice Promptly.

- (1) Unless otherwise provided in this Section, it shall be unlawful for an owner, agent or lessee of real property to fail to remove or fail to cause to be removed hail, snow, sleet, and/or ice, from the entire length and breadth of every Sidewalk in the City within the twenty four (24) hour period immediately following the cessation of a Precipitation Event.
- (2) The duty imposed in this subsection (B)(1) shall not include snow placed onto Sidewalks by snow removal equipment of the City or its designee after it has been removed following a Precipitation Event.

(C) Exemptions. The following persons shall be exempt from the duty imposed by subsection (B) of this Section:

- (1) A person who is physically or mentally impaired in such a manner that they are unable to perform the duty imposed;
- (2) A pregnant person;
- (3) A person who is seventy (70) or more years of age; and
- (4) A lessee who occupies a unit of a multi-family dwelling unit located on the owner's property who is not an agent or a lessee charged with a legal and/or contractual duty of removal of hail, snow, sleet, and/or ice from the Sidewalk.

#### 8-10-9 OBSTRUCTION OF A CITY SIDEWALK, STREET, EASEMENT, RIGHT-OF-WAY, OR OTHER PUBLIC WAY WITH SNOW OR ICE IS PROHIBITED.

(A)(1) It shall be unlawful to place snow or ice removed from private property (including a Sidewalk) upon any public sidewalk, street, easement, right-of-way, or other public way, alleyway or Sidewalk.

(A)(2) It shall also be unlawful to place snow or ice removed from Sidewalks, private driveways, driveway approaches, or other public places in or upon a public Sidewalk, street, easement, right-of-way or other public way, alleyway or Sidewalk in a manner that causes a hazard or obstruction to vehicular or pedestrian traffic.

#### 8-10-10 PENALTIES.

(A) Any person who violates Sections 8-10-9 of this Chapter is guilty of an infraction for every twenty-four (24) hour period of a failure to comply with a duty imposed by such sections in an amount set from time to time by City Council.

(B) Any person who violates Sections 8-10-8 of this Chapter is guilty of an infraction in an amount set from time to time by City Council.

## **CHAPTER 11 CEMETERY REGULATIONS**

### **SECTION:**

- 8-11-1: Cemeteries Under Control of City
- 8-11-2: Title to Cemetery Land
- 8-11-3: Transfer of Lot by Owner; Transfer Fee
- 8-11-4: Issuance of Certificate by Clerk
- 8-11-5: Cemetery Funds
- 8-11-6: Sexton's Fees; Burial Record
- 8-11-7: Depth of Grave
- 8-11-8: Duties of Sexton
- 8-11-9: Cemetery Ownership Record
- 8-11-10: Monuments
- 8-11-11: Restriction on Marking Graves
- 8-11-12: Improvements of Cemetery Lots
- 8-11-13: Charges and Fees
- 8-11-14: Wooden Caskets Prohibited
- 8-11-15: Burials Prohibited on Certain Days
- 8-11-16: Cremation: burials:
- 8-11-17: Restriction of Use of Grave Sites

8-11-1: **CEMETERIES UNDER CONTROL OF CITY:** The cemetery lying within the City, known as Rosehill Cemetery, and the cemetery lying within the City, known as Fielding Memorial Park, shall be under the direct supervision and control of the City.

8-11-2: **TITLE TO CEMETERY LAND:** The title to all land located within Rosehill Cemetery and Fielding Memorial Park, not heretofore transferred or conveyed by deed or certificate, shall vest in the City, and shall be transferred by a certificate executed by the Mayor and Clerk under the seal of said City. Such certificate shall vest title to the lots so conveyed or transferred to the purchaser, his heirs and assigns, in fee simple, for burial purposes only subject to such conditions as may be imposed or prescribed by the City.

8-11-3: **TRANSFER OF LOT BY OWNER; TRANSFER FEE:** A cemetery lot may be transferred from one person to another by surrendering the original certificate to the Clerk, and requesting the clerk to issue a new certificate to the new owner. The Clerk shall issue a new certificate upon the payment of a fee as set from time to time by Resolution of the Council and upon execution by the original owner or owners of an assignment of such certificate. (Ord. 2964, 8-14-14)

8-11-4: **ISSUANCE OF CERTIFICATE BY CLERK:** Persons desiring to purchase a lot in either of said cemeteries shall make application to the Clerk. Upon receipt of the application and payment of the purchase price determined by resolution of the City Council, the City Clerk

shall execute and deliver to the applicant a certificate evidencing the applicant's ownership thereof. In the event a certificate is lost or destroyed, the Clerk may, upon sworn proof of ownership, issue a new certificate upon payment of a fee in an amount set from time to time by Resolution of the Council. (Ord. 2964, 8-14-14)

8-11-5: CEMETERY FUNDS: All moneys received by the Clerk shall be delivered forthwith to the City Treasurer who shall immediately deposit the same.

8-11-6: SEXTON'S FEES; BURIAL RECORD: Any owner of a burial plot desiring an interment in either cemetery shall apply to the Clerk. Upon payment of the Sexton's fees hereinafter set forth, the Clerk shall give the applicant a certificate stating the name of the deceased and the location of the burial plot where the deceased is to be interred. The Clerk shall also enter in the book to be known as "The Burial Record" the name of the deceased, the date of his or her death, the cause or manner of death, if known, and age of the deceased.

8-11-7: DEPTH OF GRAVE: Every grave shall be at least six feet (6') deep measured from the surface of the ground to the bottom surface of the grave.

8-11-8: DUTIES OF SEXTON: The Sexton shall dig or cause to be dug graves for interment of bodies in either of the City cemeteries; provided, if the person making application for interment desires to dig the grave, the Sexton shall supervise such excavation and the location thereof. The Sexton shall fill all graves where interments are made, trim any grass, trees or shrubbery thereon and keep all graves in an attractive condition. The Sexton shall care for all ground and tombstones in the City cemeteries. The Sexton shall not permit internment of anybody without delivery of a Clerk's Certificate under Section 8-11-6 hereof by the person requesting such internment.

8-11-9: CEMETERY OWNERSHIP RECORD: The Clerk shall keep a record of the ownership of all lots located within the City cemeteries. Such record shall state the name and address of the owner, the purchase price paid for the lot or lots and the date of sale.

8-11-10: MONUMENTS: The owner of any lot in which a deceased person is interred shall install a permanent monument or plaque at the head of such grave with the name of the deceased plainly inscribed thereon. If the owner neglects or fails to install such monument or plaque within six (6) months from the date of burial, the Sexton shall place a monument or plaque at the head of the grave at the expense of the owner of said plot.

8-11-11: RESTRICTION ON MARKING GRAVES: No person shall erect any monument, headstone, or grave marker above the surface of the ground within the following sections of Fielding Memorial Park Cemetery: Wasatch Lawn, Sunset, Roselawn, Forest Lawn, Pinehurst, Parkhurst, Valley View, Nauvoo Lawn, LaCresta, Whispering Hope, Cloverdale, Willowlawn, Comorah, Restlawn and Memory Lane. (Ord. 2230, 5-22-97; Ord. 2638, 4-13-06)

8-11-12: IMPROVEMENT OF CEMETERY LOTS: No person shall erect or maintain any fence, corner post, coping, wall, hedge or boundary of any kind upon any grave or lot in a

City cemetery. No trees or shrubs shall be planted in Rose Hill Cemetery or Fielding Memorial Park Cemetery without permission from the Sexton or superintendent. No person shall grade the ground or land above any grave, lot or lots in said cemeteries, or build any tomb or mausoleum upon the same, except under the supervision of the Sexton. The Sexton shall, whenever requested, furnish the true lines of said lots according to the official survey and shall prevent and prohibit the marking of the same in any manner prohibited by this Chapter and shall prevent any grading in a manner which destroys the symmetry of the land. The Sexton shall, under the direction of the Mayor and Council, have general care of and make general improvements of all lots in said cemeteries. (Ord. 2230, 5-22-97)

8-11-13:       **CHARGES AND FEES:** The fees for burial spaces and Sexton services within Rose Hill Cemetery and Fielding Memorial Park Cemetery shall be set by Resolution by the City Council. (Ord. 2230, 5-22-97) (Ord. 2444, 4-11-02; Ord. 2508, 9-11-03; Ord. 2619, 9-8-05; Ord. 2664, 09-14-06; Ord. 2885, 10-27-11))

8-11-14:       **WOODEN CASKETS PROHIBITED:** Wooden caskets shall not be used for burial of anybody within any City cemetery.

8-11-15:       **BURIALS PROHIBITED ON CERTAIN DAYS:** Burials are prohibited within the City cemeteries on any legal holiday except Washington's Birthday, Veteran's Day, Idaho Human Rights Day or Columbus Day.

8-11-16:       **CREMATION BURIALS:** No cremation interment shall be allowed in a traditional burial space after June 1, 1997, unless other cremains have been interred prior to such date within any burial space located within the lot in which such interment is requested.

8-11-17:       **RESTRICTION OF USE OF GRAVE SITE:** In Rose Hill Cemetery and Fielding Memorial Park Cemetery no more than one (1) remains or cremains shall be allowed to be buried in a burial space.



## **CHAPTER 12**

### **AIRPORT PASSENGER FACILITY CHARGES**

#### **SECTION:**

- 8-12-1: Purpose
- 8-12-2: Definitions
- 8-12-3: Imposition of the PFC
- 8-12-4: Administration and Collection of PFC
- 8-12-5: Term of Fee
- 8-12-6: Establishment of Airport PFC Fund
- 8-12-7: Audit of Airport PFC Fund
- 8-12-8: Record Keeping and Auditing of Collecting Carriers
- 8-12-9: Use of PFC

8-12-1: **PURPOSE:** The purpose of this Chapter is to establish a procedure for the imposition, collection, use, keeping and auditing of a passenger facility charge as authorized by the Aviation Safety and Capacity Expansion Act of 1990 (49 U.S.C. 1513), pursuant to the regulations set forth in Volume 56, No. 103, Part 158 of the Federal Register, published on May 29, 1991.

8-12-2: **DEFINITIONS:** For the purposes of this Ordinance words and phrases used herein shall have the meanings ascribed below:

**ACT:** The Aviation Safety and Capacity and Expansion Act of 1990 (49 U.S.C. §1513).

**AIRPORT:** The City of Idaho Falls Regional Airport.

**ADMINISTRATOR:** The Administrator of the Federal Aviation Administration pursuant to Section 1113(e) of the Federal Aviation Act of 1958.

**ALLOWABLE COST:** The reasonable and necessary costs of carrying out an Approved Project including costs incurred prior to and subsequent to the approval by the Administrator to impose a PFC, Bond Financing Costs and payments for debt service on bonds and other indebtedness incurred to carry out such Project.

**APPROVED PROJECT:** A Project for which the use of PFC revenue has been approved by the Administrator.

**BOND FINANCING COSTS:** The costs of financing a bond, including such costs as those associated with issuance, underwriting discount, original issue discount, capitalized interest, debt service reserve funds, initial credit enhancement fees and initial trustee and paying agent fees.

**CHARGE EFFECTIVE DATE:** January 1, 1993, or such other date the City is authorized by the Administrator to impose a PFC.

**CHARGE EXPIRATION DATE:** The date on which air carriers are to cease to collect a PFC, as determined by the Administrator.

**CITY:** The City of Idaho Falls, Idaho.

**COLLECTING CARRIER:** An issuing carrier or other carrier collecting a PFC, whether or not such carrier issues the air travel ticket.

**DEBT SERVICE:** Payments for such items as principal and interest, sinking funds, call premiums, periodic credit enhancement fees, trustee and paying agent fee, coverage and remarketing fees.

**ISSUING CARRIER:** Any air carrier or foreign air carrier that issues an air travel ticket or whose imprinted ticket stock is used in issuing such ticket by an agent.

**PASSENGER ENPLANED:** A domestic, territorial or international revenue passenger enplaned in the States in scheduled or nonscheduled service on aircraft in intrastate, interstate or foreign commerce.

**PASSENGER REVENUE:** A person receiving air transportation from an air carrier for which remuneration is received by the air carrier. Such term includes persons traveling under a frequent flyer program or other promotional program based upon frequency of prior paid revenue travel. Air carrier employees or others receiving air transportation against whom token service charges are levied are considered non-revenue passengers. Infants for whom a token fare is charged are not considered as revenue passengers.

**PFC:** A passenger facility charge imposed by the City on Passengers Enplaned at the Airport.

**PROJECT:** Airport planning, Airport land acquisition or development of a single project a multi-phase development program or a new airport for which PFC financing is sought or approved by the Administrator.

**REGULATIONS:** The regulations set forth in Part 158, Volume 56, No. 103, Federal Register as published on May 29, 1991, or as may be subsequently adopted by the Federal Aviation Administration.

**STATE:** A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands and Guam. (Ord. 3003, 4-23-15)

**8-12-3: IMPOSITION OF PFC:** Subject to the Regulations and the approval by the Administrator, a PFC in an amount set from time to time by Resolution of the Council, is hereby imposed on all Passengers Enplaned at the Airport. (Ord. 2964, 8-14-14)

8-12-4:        **ADMINISTRATION AND COLLECTION OF PFC:** The imposition, collection, administration, investment and accounting of PFC's shall be in accordance with the Act and the Regulations now in force or as may be hereafter adopted in the manner required by the Act or other applicable law.

8-12-5:        **TERM OF FEE:** The PFC shall be imposed on the Charge Effective Date and shall cease to be collected on the Charge Expiration Date.

8-12-6:        **ESTABLISHMENT OF AIRPORT PFC FUND:** A fund known as the Airport PFC Fund is hereby established into which all revenues derived from the collection of PFC's shall be deposited. The City Controller shall maintain a separate account for each approved Project for which PFC revenue has been approved by the Administrator. The accounting record shall identify the PFC revenue received from the collecting carriers, interest earned on such revenue, the amounts used on each approved project and the amount reserved for currently approved projects.

8-12-7:        **AUDIT OF AIRPORT PFC FUND:** At least annually during any period in which a PFC is collected, held or used, the City Controller shall obtain an audit of said fund by an accredited independent public accountant. The accountant shall express an opinion of the fairness and reasonableness of the procedures for receiving, holding and using PFC revenue. The accountant shall also express an opinion whether the quarterly report required under Section 158.63 of the Regulations fairly represents the net transactions within said fund. The audit may be performed specifically for the fund or conducted as part of an audit under the Single Agency Audit Act of 1983 (31 U.S.C. Section 7501, et seq.), provided the Airport PFC Fund is specifically addressed by the auditor. Upon request, a copy of the audit shall be provided to each collecting carrier that remitted PFC revenue to the City in the period covered by the audit, and to the Administrator.

8-12-8:        **RECORD KEEPING AND AUDITING OF COLLECTING CARRIERS:** All collecting carriers shall establish and maintain for the City an accounting record of PFC revenue collected, remitted, refunded and compensation retained pursuant to this Ordinance and the Regulations. Such accounting records shall be made available to the City and the Administrator at all reasonable times and shall be audited in accordance with the Regulations.

8-12-9:        **USE OF PFC:** All PFC revenue collected pursuant to this Ordinance, including any interest earned after such revenue has been remitted to the City, may be used only to finance Allowable Costs of an Approved Project at the Airport. The use of such PFC revenue shall further be restricted in accordance with the limitations set forth in the Regulations.

## **CHAPTER 13**

### **PUBLIC FIBER OPTIC NETWORK**

#### **SECTION:**

- 8-13-1: Definitions
- 8-13-2: Purposes
- 8-13-3: Ownership of the Fiber Optic Network
- 8-13-4: Management of Fiber Optic Network Access
- 8-13-5: No Obligation to Serve
- 8-13-6: Applicability to Fiber Optic Network Customers
- 8-13-7: Application for Fiber Optic Network Access
- 8-13-8: Transfer of Access Rights Prohibited
- 8-13-9: Rates and Schedules
- 8-13-10: Limitations Upon Delivery of Fiber Access
- 8-13-11: (Reserved)
- 8-13-12: Limitations Upon Number of Fiber Strands
- 8-13-13: Rights of Way
- 8-13-14: Billings
- 8-13-15: Voluntary Termination of Fiber Optic Access
- 8-13-16: Involuntary Termination of Fiber Optic Access
- 8-13-17: Plans for Payment of Delinquent Accounts
- 8-13-18: Liability for Interruptions of Service
- 8-13-19: Shut-down for Repairs
- 8-13-20: Temporary Suspension of Demand By Customer
- 8-13-21: Interference with Access
- 8-13-22: Protection of Customer's Equipment:
- 8-13-23: Backbone Extensions
- 8-13-24: Distribution System Extension
- 8-13-25: Distribution Design
- 8-13-26: Cost Sharing for Distribution Fiber Extensions
- 8-13-27: Schedule of Rates
- 8-13-28: Tampering with Fiber Optic Network Prohibited
- 8-13-29: Theft of Fiber Optic Access

8-13-1: **DEFINITIONS:** Certain terms used in this Chapter shall have the meanings ascribed below:

**ACCESS NODE:** An enclosure with splice trays on the fiber optic system that provides access for splicing a customer connection to the public distribution system.

**BACKBONE ACCESS POINT:** An enclosure with splice trays on the backbone ring that provides access for splicing distribution fiber to the fiber backbone.

**BUFFER TUBE:** A plastic tube containing a bundle of fiber strands within a fiber optic cable.

**CITY:** The City of Idaho Falls, Idaho.

**CUSTOMER:** A retail or wholesale user of fiber optic access provided through the Fiber Optic System.

**DARK FIBER:** A fiber strand without any light flowing through it.

**DIRECTOR:** The Director of the Idaho Falls Power, or his or her designee.

**DISTANCE RATIO:** The ratio resulting from the total lineal length of a distribution fiber line measured between the fiber backbone and an initial fiber customer's point of delivery, as the denominator, and the distance between any subsequent customer's point of delivery and the initial connection to the backbone, as the numerator.

**DISTRIBUTION FIBER:** A fiber that connects the fiber backbone ring to a customer's facility fiber, customer access drop, or other customer owned equipment.

**FIBER BACKBONE:** A network of dark fiber, generally consisting of 96 or more strands of single mode fiber located within the public right of way, all as more particularly shown on the Fiber Map maintained on file at the offices of Idaho Falls Power.

**FIBER MAP:** A map depicting the location of the public fiber backbone, including any amendments thereto, as may be determined by the Director of Idaho Falls Power.

**FIBER OPTIC CABLE:** A cable containing a bundle of fiber strands.

**FIBER OPTIC CUSTOMER:** A person who applies for or receives fiber optic access from the City.

**FIBER OPTIC PATHWAY:** A physical pathway within a fiber strand through which pulses of light may be transmitted.

**FIBER STRAND:** An individual glass fiber, roughly the thickness of a human hair, that is capable of carrying a distinct signal transmitted in the form of pulses of light.

**INTERCONNECTION WORK:** All activities necessary to establish fiber pathway(s) between two or more locations.

**INTERNET SERVICE PROVIDER OR "ISP":** A Fiber Optic Customer who provides fiber optic access or internet services to Retail Internet Users for monetary gain or other consideration.

**INITIAL DISTRIBUTION FIBER CONSTRUCTION COSTS:** The total cost of designing and constructing an extension of distribution fiber between the backbone and an initial customer's point of delivery. Such amount shall be established by the Director following the construction of such distribution line by the City based upon the reasonable and actual costs incurred by the City, whether performed by City crews or by an independent contractor.

**INITIAL FIBER CUSTOMER:** A customer who constructs a distribution line at his or her sole expense, which line benefits or potentially benefits a subsequent fiber customer who connects to and uses any portion of such line or facilities constructed by such initial customer.

**POINT OF DELIVERY:** A physical location or point that separates the public fiber optic system from the equipment owned by the customer, typically a patch panel located within the customer's premises.

**PUBLIC FIBER OPTIC SYSTEM:** A publicly owned transmission medium or network of optical fiber cables owned by the City, along with all associated electronics and equipment, capable of carrying a digital signal or data by means of electric lightwave impulses.

**RETAIL INTERNET USER:** A consumer or end-user of internet or data transmission services or fiber optic access who does not sell or provide such services to other customers for monetary gain or consideration.

**ROUTE-DIVERSE RING:** A fiber network design which provides redundant signal pathways along two different routes between two or more locations.

**SPLICE:** A physical connection between the ends of two fiber strands.

**SPLICE POINTS:** A point on the fiber backbone where segments of the fiber backbone are interconnected to each other. Drop cables may also connect distribution fiber to the fiber backbone at these locations.

**SUBSEQUENT FIBER CUSTOMER:** Any fiber customer who connects to or uses any portion of a fiber distribution line constructed at the sole expense of an initial fiber customer.

**USAGE RATIO:** A ratio used to calculate the portion of the initial distribution fiber construction costs to which an initial customer is entitled to recover from a subsequent fiber customer at the time the subsequent customer connects a drop cable to any portion of a distribution line constructed at the expense of the initial customer. The ratio shall consist of a fraction for which the total distribution line capacity constructed by the initial customer's the denominator, and the subsequent customer's projected usage of such capacity, as the numerator.

**UTILITY EASEMENT:** A permanent right to use real property for the purpose of constructing, operating and maintaining publicly owned utility services, including but not limited to a fiber optic cable for communications services.

**WHOLESALE CUSTOMER:** A Fiber Optic Customer who leases one or more fiber optic pairs for the purpose of selling or providing internet or data services to other retail users for monetary gain or consideration. (Ord. 2835, 4-22-10; Ord. 3003, 4-23-15)

8-13-2:       **PURPOSES:** The purposes of this Chapter are as follows:

(A) To enhance access to and encourage cost effective use of high speed data transmission lines serving publicly-owned facilities.

(B) To enhance the growth and continued economic vitality of the City by providing to the City residents a high speed, modern and efficient means of communicating information and transmitting electronic data.

(C) To manage and regulate competing demands for use of the public right-of-way by minimizing the installation of duplicative communications lines and facilities on, over or under the public right-of-way.

(D) To reduce the cost of maintaining the sidewalk, pavement and public facilities located within the public right-of-way by minimizing the number of pavement cuts and dislocation of other public facilities necessitated by the construction or installation of duplicative communications lines.

(E) To foster competition among communication providers by providing open access to the publicly-owned fiber network.

(F) To reduce the cost of communication services to City residents by eliminating anti-competitive pricing schemes or monopolistic practices which contribute to higher costs for communications services.

(G) To preserve and enhance the ability of private retail communication providers to serve their clientele without undue competition or regulation by a tax-supported entity. (Ord. 2835, 4-22-10)

8-13-3: **OWNERSHIP OF THE FIBER OPTIC NETWORK:** There is hereby established as a division within Idaho Falls Power, the Public Fiber Optic Network System. Management of the public fiber optic network shall be vested solely in Idaho Falls Power, subject to such rules, regulations, and operational guidelines as may be approved by the Council. Notwithstanding the foregoing, to the extent possible all operational costs, charges, expenses, revenues and receipts attributable to or derived from the operation of the public fiber optic network shall be separately accounted for or fairly apportioned between the fiber optic system and the electrical energy generation, distribution & transmission system, in order to establish fair, equitable and non-discriminatory rates for the delivery of fiber optic access, separate and apart from the establishment of electrical. (Ord. 2835, 4-22-10; Ord. 3003, 4-23-15)

8-13-4: **MANAGEMENT OF FIBER OPTIC NETWORK ACCESS:** The City shall have exclusive right to sell, lease and deliver fiber optic access on the public fiber network. (Ord. 2835, 4-22-10)

8-13-5: **NO OBLIGATION TO SERVE:** The City shall have no obligation to serve or provide fiber optic access to any customer. The City reserves the right to limit or refuse access

to the public fiber network at its sole discretion, provided access shall not be denied or limited on the basis of race, religion, age, national origin or gender. (Ord. 2835, 4-22-10)

**8-13-6:           APPLICABILITY TO PUBLIC FIBER OPTIC NETWORK CUSTOMERS:**

The provisions of this Chapter shall apply only to the delivery of fiber optic access and related services across the publicly-owned fiber optic network. Nothing herein shall be construed or deemed to regulate the delivery of communications or data services over or across lines, facilities, or equipment owned by a private communications provider, or which may be located in the public right-of-way pursuant to a franchise, lease, or other license or privilege granted by the City. (Ord. 2835, 4-22-10)

**8-13-7:           APPLICATION FOR FIBER OPTIC NETWORK ACCESS:**

(A)   Fiber optic access shall not be delivered to any customer until the customer or his or her authorized agent personally appears at the office of Idaho Falls Power, 140 S. Capital Ave., Idaho Falls, Idaho and makes written application for delivery of fiber optic access. Such application shall be in such form as may be determined by the Director and the City Attorney. The Director may require appropriate identification of any customer or agent making application for fiber optic access. Customers requesting any fiber optic access which contemplates substantial extensions of the fiber backbone or the construction of significant enhancements or additions to the fiber optic network at public expense may be required to present site plans, improvement plans, feasibility plans, financial statements and financial guarantees contemporaneously with such application. Any customer who willfully gives materially false information in his or her application or who shall falsely represent his or her identity shall be guilty of a misdemeanor and fiber optic access to such customer may be subject to summary termination of access in accordance with Section 8-13-15 of this Chapter.

(B)   In the event installation of distribution fiber is necessary in order to provide the access requested by the customer, the cost of designing and installing such distribution line shall be borne by the customer, subject to the customer's recovery of a portion of such cost from a subsequent customer, in the manner set forth in Section 8-13-26 of this Chapter. The Director may require the initial customer to pay the estimated costs of such design and installation to the City prior to and as a condition for the commencement of the installation of such distribution fiber by the City. The design and/or installation of such distribution fiber may be performed by City crews or by an independent contractor hired by the City. In the event the installation is performed by an independent contractor, the City shall deliver a copy of the contractor's bid to the customer prior to its issuance of a notice to proceed to such independent contractor. In the event the actual costs of such construction exceed the initial estimate by the Director, such excess shall be paid to the City within fifteen (15) days after the delivery of an itemized invoice to the customer by the City, reflecting the total amount of the design and construction costs incurred by the City in constructing such distribution fiber extension. In the event such construction costs are less than the estimate, then such difference shall be returned to the initial customer within thirty (30) days after the substantial completion of such distribution fiber extension. In no event will the City undertake the design or construction of a new distribution line, if the customer is delinquent in his or her payment of the access charges set forth in section 8-13-27 hereof or is otherwise in default of his or her obligations under this



Chapter. Payment for distribution fiber may also be made in monthly installments not to exceed a total of sixty (60) months. Provided a written agreement is approved by the City Council and signed by the customer. Amortization shall not be allowed if the Retail Internet User for whom the distribution fiber is being constructed or installed has paid the wholesale customer for such distribution fiber or has agreed to pay for such distribution fiber in full. Amortization shall not be allowed until the wholesale customer has demonstrated a satisfactory payment history of not less than one (1) year with the public fiber system. If the Retail Internet User for whom such distribution fiber has been provided thereafter discontinues his or her service agreement with the customer with whom the City has executed an amortization agreement, such Retail Internet User shall not be allowed to again use such distribution fiber unless the new service provider for such Retail Internet User agrees to assume and pay the entire balance then owed on the account of such distribution fiber. (Ord. 2835, 4-22-10; Ord. 3003, 4-23-15)

8-13-8:       **TRANSFER OF ACCESS RIGHTS PROHIBITED:** All rights to fiber access and any rights or privileges arising under the provisions of this Chapter shall not be transferred to any person or entity without the express written approval of the Director. (Ord. 2835, 4-22-10)

8-13-9:       **RATES AND SCHEDULES:** Fiber optic access supplied by the City shall be billed in accordance with the schedule of rates set forth in Section 8-13-27 of this Chapter. The schedule of rates is designed to provide monthly rates for access supplied to the customer. Selection of appropriate rates shall be based on the customer's choice of available services, subject to the approval of the Director. (Ord. 2835, 4-22-10)

8-13-10:       **LIMITATIONS UPON DELIVERY OF FIBER ACCESS:**

(A)       Access shall be delivered only to premises or facilities which are in conformity with the provisions of this Chapter, the International Building and/or Fire Codes, the Zoning Ordinance and all other ordinances of the City.

(B)       Access will be supplied under a given rate schedule only to such points of delivery as are adjacent to the public fiber optic system of the City and provided that the public fiber optic system has the technological capability to meet the customer's service needs under the rate schedule applicable thereto. The City shall not be obligated to construct extensions or install additional fiber access facilities necessary to meet a fiber customer's needs except as explicitly authorized by the Director.

(C)       No portion of the Fiber Optic System shall be used by any customer for the purpose of extending a fiber line or providing fiber access to any person whose point of delivery is not located within the territorial limits of the City.

(D)       No backbone fiber pair shall be leased for a period of less than one year. (Ord. 2835, 4-22-10)

8-13-11:       **(RESERVED):**

8-13-12:        **LIMITATIONS UPON NUMBER OF FIBER STRANDS:** Consistent with the stated purpose of this Chapter to promote competition among communication service providers in Idaho Falls, no customer may lease or use more than six fiber pairs, twelve strands, at any given time, except as expressly provided for in a written agreement signed by an authorized agent of the City. (Ord. 2835, 4-22-10)

8-13-13:        **RIGHTS OF WAY:** The City may condition fiber optic access upon the customer's dedication or conveyance to the City of a utility easement for the installation, operation and maintenance of the City's fiber, equipment and apparatus, over, across and upon property owned or controlled by the customer or the customer's landlord. The City may also require such dedication or conveyance to be by warranty deed or it may require execution of an indemnification covenant assuring good and merchantable title thereto. Such utility easement may also be used for the purpose of providing fiber optic access to other fiber customers of the City. Such utility easement shall permit access thereto by the City employees, at all reasonable hours or at any time in any emergency situation. By acceptance of or submission of an application for fiber optic access, the customer shall be deemed to waive any claim for damages to the customer's property or equipment located within such utility easement, arising from the operation or maintenance of the fiber optic system therein. Such acceptance or application shall also be deemed to constitute a waiver of any claim for damages arising from a taking or any severance damages with respect to a customer's underlying fee simple interest. (Ord. 2835, 4-22-10)

8-13-14:        **BILLINGS:** Billings for fiber optic access shall be rendered upon a monthly basis. Bills rendered for fiber optic access are payable upon receipt and shall become delinquent ten (10) days from the date on which the billing was rendered. When the delinquent date falls on a legal holiday, the next regular business day shall be considered to be the delinquent date. Any billing that is not paid prior to the delinquent date shall be assessed a delinquency fee of five percent (5%) of the amount of the billing. Billings shall be deemed paid upon receipt at the office of the City Treasurer. Bills may be rounded to the nearest even dollar. Any account not paid by the past due date shall bear interest at the maximum rate permitted by law, commencing upon the past due date. (Ord. 2835, 4-22-10)

8-13-15:        **VOLUNTARY TERMINATION OF FIBER OPTIC ACCESS:**

(A)     In the event that any customer desires to discontinue receiving fiber optic access from the City, he or she shall give advance notice in writing to the Director of such desire. Customers will be responsible for all fiber optic access made available to the customer's premises until the date set forth in the customer's notice and for any construction or distribution costs provided or incurred by the City in order to make access available to such customer. In the event any customer fails to give written notice in the manner set forth above, the customer shall be responsible for any and all bills or monthly service charges incurred until such notice is given, or until another customer makes application to receive fiber optic access at the same point of delivery, regardless of whether or not the original customer actually utilized the fiber optic access for his or her own purposes.

(B) In the event any Wholesale Customer terminates service prior to the expiration of one (1) year from the date service was first commenced, then the entire unpaid balance for the service charges remaining for such one (1) year period, shall become immediately due and payable upon delivery of the customer's notice of termination. (Ord. No. 2736, 2-14-08) (Ord. 2835, 4-22-10)

8-13-16: INVOLUNTARY TERMINATION OF FIBER OPTIC ACCESS:

(A) Whenever a bill becomes delinquent for more than fifty (50) days, fiber optic service may thereafter be terminated in the manner set forth below. In the event of such delinquency, or upon the customer's failure to comply with this Chapter, the City Treasurer shall mail a notice of termination to the customer and the customer's service may thereafter be terminated upon compliance with the procedure set forth hereinafter. The notice of termination shall contain the following:

- (1) The customer's name and mailing address.
- (2) The address or addresses where service is being delivered.
- (3) The customer's account number under which the default has occurred.
- (4) A statement that the customer's account is delinquent and the amount of such delinquency as of a specified date, or a statement of the reason for the proposed disconnect.
- (5) A statement that the customer is entitled to a hearing regarding the alleged default.
- (6) The period of time within which the customer must appear for the hearing.
- (7) A statement that if customer does not appear within such time period the amount of the delinquency or the default will be deemed to be correct and that the customer's fiber optic services, water, or electric service at all points of delivery may be discontinued immediately thereafter if the bill is not sooner paid or unless a written arrangement for payment of the billing satisfactory to the City Treasurer is made, or unless the default is immediately corrected.

(B) The period of time in which the customer must appear shall not be less than ten (10) days and shall commence two (2) days after the date the notice of termination is mailed. The notice of termination shall be deemed to have been delivered upon its deposit in the United States mail, postage prepaid, addressed to the customer at the customer's address set forth in the customer's application for electric services, or such other address as may be communicated

to the Utility Clerk in writing. If the customer fails to appear within such time period and the bill has not been paid, or satisfactory arrangements for the payment thereof have not been made, or the customer's default has not been satisfactorily corrected, the City Treasurer may immediately issue an order to discontinue fiber optic, electric, and water service to such customer. If the customer appears at the hearing, the City Treasurer shall hear the customer's complaint, review and examine the testimony and evidence presented and forthwith render a decision based upon such testimony and evidence and upon the records of the City. The City Treasurer may render a decision at the hearing or may render a decision in writing, and in such case shall mail a copy thereof to the customer. In the event the City Treasurer finds the customer to be in default, the City Treasurer shall advise the customer that his or her service will be discontinued at the expiration of three (3) days after notice of the Treasurer's decision is given or mailed, unless the customer's default is satisfactorily corrected before such date. Termination of utility service may be made of any or all utility accounts under the name of the customer in default, regardless of whether or not the default relates to the premises or account for which termination is ordered.

(C) In the event fiber optic access is terminated for delinquency or other default, fiber optic access and other utility services shall not be restored until the entire amount of the delinquency and delinquency charges are paid in full, or the default is corrected, or an arrangement in writing is made for payment of such charges and a disconnect fee in an amount set from time to time by Resolution of the Council is paid. In the event one or more disconnect orders have been issued within the twelve (12) month period preceding the date of the current disconnect order, the disconnect fee shall be in an amount set from time to time by Resolution of Council. Nothing herein shall authorize the collection or assessment of fees exceeding in the aggregate three hundred dollars (\$300) per re-connection where service is discontinued for multiple utility services.

(D) In the event of such termination, the customer will forfeit all access rights and rights to use any leased fiber pair owned by the City and all proprietary rights, if any, to serve retail customers using the Fiber Optic System of the City.

(Ord. No. , 2-14-08; Ord. 2835, 4-22-10; Ord. 2964, 8-14-14)

#### 8-13-17: PLANS FOR PAYMENT OF DELINQUENT ACCOUNTS:

(A) No arrangement or plan for the payment of any delinquent account shall be valid unless in writing and signed by the City Treasurer, or a designated representative, or confirmed or approved by a court of competent jurisdiction. In the event a customer proposes an arrangement or plan for payment of a delinquent account, whether informally or by order of court, the City Treasurer may require that a security deposit, subject to the limitations set forth hereinafter, be deposited and held by the City for the duration of the arrangement or plan. If the customer fails to timely pay his bills accruing thereafter or fails to comply with the arrangement or plan, the security deposit may then be forfeited and applied against the amount of any delinquency, and access may thereafter be discontinued in the manner set forth in the plan or arrangement, or if no disconnect procedure is set forth in the plan or arrangement, then fiber optic access and other public utility service to any property owned, leased or controlled by the

customer, may be summarily terminated without further notice. The security deposit shall be returned after full compliance with the plan or an arrangement and as soon as a responsible and timely record of payments of the customer's billings has been established for a period of at least twelve (12) consecutive months. The amount of the security deposit shall be determined at the discretion of the City Treasurer, provided that in no event shall the security deposit exceed three (3) times the amount of the customer's average monthly bill for all utility services, including fiber optic access, for the preceding twelve (12) months. If the customer has not received fiber optic access for at least twelve (12) consecutive months, the amount of the security deposit shall not exceed an amount set from time to time by Resolution of the Council for commercial or industrial customers, or three (3) times the customer's average monthly fiber optic access and other utility services bill, whichever is greater.

(B) In the event the customer fails to fully comply with the terms and conditions of the payment plan, then utility service or access may be discontinued without prior notice and without compliance with the notice and hearing provisions of Section 8-13-15 of this Chapter. (Ord. 2835, 4-22-10; Ord. 2964, 8-14-14)

8-13-18: **LIABILITY FOR INTERRUPTIONS OF ACCESS:** The City shall not be liable for any loss, injury or damage of any kind, including but not limited to consequential, special and punitive damages, resulting from the interruption, reduction, loss or restoration of fiber optic access from any cause, including without limitation any loss by fire, flood, accident, casualty, sabotage, terrorist act, strike, labor slow-down, act of God or the public enemy or failure or inadequacy of distribution fiber, backbone fiber or appurtenant facilities. The City disclaims any express or implied warranty of merchantability or fitness for a particular purpose and the delivery of fiber optic access to any customer shall not be construed as or deemed to be the delivery of goods under the Idaho Uniform Commercial Code. By acceptance of fiber optic access, the customer agrees to, and shall be deemed to, waive any and all claims for damage or loss to the customer's lines, facilities, or communications equipment caused by any act or omission of the City, however, nothing herein shall be deemed or construed as a waiver of any claim for damage or liability arising out of the gross negligence or malicious act of the City, or its agents. (Ord. 2835, 4-22-10)

8-13-19: **SHUT-DOWN FOR REPAIRS:** For the purpose of making necessary repairs, upgrades or changes to its backbone or distribution facilities, or to avoid damage to property or to persons, the City may without prior notice to the customer suspend fiber optic access for such periods as may be reasonably necessary to make such repairs, upgrades or changes and the City shall not be liable for damage of any kind, direct or indirect, as a result of such discontinuance of fiber optic access. (Ord. 2835, 4-22-10)

8-13-20: **TEMPORARY SUSPENSION OF DEMAND BY CUSTOMER:** Whenever a customer suspends operation due to strikes, action of any governmental authority, act of God or the public enemy or other force majeure, the customer shall continue to be obligated to pay the monthly fiber optic access charge provided in the rate schedules set forth in this Chapter and for any distribution costs established in his or her Fiber Optic Access Application, irrespective of such temporary suspension. (Ord. 2835, 4-22-10)

8-13-21: **INTERFERENCE WITH ACCESS:** The City may refuse to supply fiber optic access where there is a possibility that the delivery of access may seriously impair or disrupt access to any other customers, or which may disrupt the operation of the public fiber optic backbone. The City may also disconnect fiber access if the customer's connection is seriously impairing access to any other customers. The City may also, without prior notice, suspend or disconnect access to any customer using the public network for the purposes of delivering any virus, spam, spyware, denial of service attacks, or any other illegal or malicious purpose which has the effect of or is intended to impair or impede the operation of the public fiber optic system, the internet, or any public or private computer or computer network connected thereto or for the purpose of obtaining illegal or unauthorized access to other computers or networks connected to the public fiber optic system. (Ord. 2835, 4-22-10)

8-13-22: **PROTECTION OF CUSTOMER'S EQUIPMENT:** The customer is solely responsible for the selection, installation and maintenance of all equipment and wiring, other than the City's apparatus, on the customer side of the point of delivery. The customer shall install and maintain suitable protective devices and equipment to protect life and property from harm or injury and the City assumes no duty to warn or otherwise assist the customer in the selection or use of such protective devices. (Ord. 2835, 4-22-10)

8-13-23: **BACKBONE EXTENSIONS:** Extensions of the fiber backbone ring may be made at the sole discretion of the City. Access to the backbone ring will be provided through the construction of distribution system facilities as described in Section 8-13-24 hereof. The City reserves the right to upgrade, overbuild and rebuild the network in any fashion which may result in new backbone or distribution and service drop boundaries. (Ord. 2835, 4-22-10)

8-13-24: **DISTRIBUTION SYSTEM EXTENSION:** An extension of the distribution system is any continuation of, or branch from, the nearest available existing distribution fiber or new branch from the nearest available Backbone Access Point. The City may make extensions of the distribution system at customer expense as provided for in the schedule of rates set forth in Section 8-13-27 hereof. All distribution construction work shall be undertaken solely by the City and at the expense of the customer. An estimate of construction costs will be provided for customer review and approval prior to beginning any construction activity and the City may require the customer to pay such estimate in full prior to the commencement of such system extension. In the event that actual costs exceed the estimate, the customer shall pay such excess before fiber optic access is provided. Customers may elect to pay for the construction costs of such extension in full at the time of connection to the publicly owned fiber system or may, with the approval of the Director, amortize such costs over a period not to exceed sixty (60) months. Notwithstanding the customer's participation in the construction costs of any extension of the distribution system, ownership and control of such extensions shall remain solely with the City. (Ord. 2835, 4-22-10)

8-13-25: **DISTRIBUTION DESIGN:** All new connections between the backbone fiber and the end use location shall be designed by authorized City personnel. Distribution will begin at the most appropriate Backbone Access Point or Access Node as determined by the Director and shall run to a patch panel installed at the desired customer location. Distribution spurs, connecting the backbone to the Access Nodes, will be constructed of single mode fiber cable

conforming to City standards. Routing will follow the public right-of-way and be placed on publicly owned poles to the maximum extent possible. Service drops will terminate at a patch panel in the end user's premises. The patch panel shall be supplied by the City and the cost thereof shall be included in the customer distribution costs payable in accordance with Section 8-13-24 of this Chapter. All customers shall allow authorized personnel of the City access to the customer's patch panel at all reasonable times and any customer who refuses to allow such access shall be subject to termination of fiber access in the manner set forth in Section 8-13-15 hereof. (Ord. 2835, 4-22-10)

8-13-26: COST SHARING FOR DISTRIBUTION FIBER EXTENSIONS:

(A) The purpose of this section is to establish an equitable method for sharing the cost of constructing distribution fiber lines among customers who use such lines in common. The initial construction costs to extend any portion of a distribution fiber line shall be borne entirely by and shared among the customers using such distribution fiber, in the manner set forth below.

(B) Each initial fiber customer who constructs distribution fiber at his or her sole expense shall be entitled to recover a portion of his or her initial distribution fiber construction costs from any subsequent fiber customer or customers who connect to any portion of the distribution fiber constructed by such initial fiber customer. Such cost recovery shall be based upon the amounts paid by the initial customer to the City pursuant to the provisions of Section 8-13-7(B) of this Chapter. Such cost recovery shall be limited to collection only from a subsequent fiber customer who connects to such portion of the distribution fiber within five (5) years from the date that the distribution fiber was placed in service. Such cost recovery shall be undertaken in the manner set forth below.

(C) At the time any subsequent customer makes application for connection to a distribution fiber line constructed at the sole expense of another customer, the Director shall notify the initial customer of such application. The Director or his or her agent shall calculate the amount of cost recovery which the initial customer is entitled to recover from the subsequent customer, based upon the following formula:

$$\text{Amount of Recovery} = \text{Usage Ratio} \times \text{Distance Ratio} \times \text{Initial Construction Costs}$$

Upon making such calculation, the Director shall notify the initial customer and the subsequent customer of such amounts. Such amounts shall then be paid to the City in a lump sum or in amortized payments in accordance with the terms of an amortization agreement approved by the Director prior to the delivery of fiber optic access to the subsequent customer. Upon receipt of such amount, the City shall credit the payment by the subsequent customer against the initial customer's monthly bill. In no case shall the total cost recovery from all subsequent users exceed the initial construction cost.

(D) For the purpose of the cost recovery method set forth herein, a subsequent customer may also be entitled to exercise such cost recovery right with respect to another

subsequent customer who connects to any portion of the distribution fiber constructed at the first subsequent user's expense.

(E) All rights to cost recovery shall terminate upon the initial customer's termination of access to the public fiber optic system or at the expiration of five (5) years from the date of the distribution fiber being placed into service, whichever first occurs. (Ord. 2835, 4-22-10)

8-13-27: SCHEDULE OF RATES:

(A) Applicability: This rate schedule applies to all customers receiving Dark Fiber access from the City of Idaho Falls. The interconnection fees set forth below shall be paid by the customer prior to his or her connection to the Fiber Optic System.

(B) Fees: The following fees associated with dark fiber optic access provided by the City shall be set from time to time by Resolution of the Council and be paid as a condition for the commencement or continuation of fiber optic access to a customer:

Backbone Dark Fiber Service Fees		Notes
Backbone Service Fee, per single pair fiber, per month		One fiber pair over entire backbone ring. Payable as per Sections 8-13-14 and 8-13-15 hereof.
New customer connection fee		Applied toward engineering and new account costs. Payable prior to connection.
Distribution Costs & Fees		Notes
Construction Costs		As determined by the Director, payable prior to connection or amortized in a Fiber Optic Access Agreement.
Distribution engineering fee		Applied towards engineering, design, layout and testing costs.
Distribution Access Fee		One distribution pair per drop, payable monthly as per Section 8-13-14 and 8-13-15.
Cost Sharing Payments or Credits		If applicable, calculated on job by job basis and payable as per section 8-13-26 hereof.

(C) Monthly Backbone Access Fee: Each customer shall pay the specified monthly charge for the use of one or more single pairs of fiber traversing the entire backbone ring, regardless of actual distances used. Only that route shown on the Network Map as dark fiber backbone is included in the monthly access charge. Any route not covered by the dark fiber backbone is considered part of the distribution system and service drop network, and shall be subject to additional service charges or fees as specified above.



(D) New Customer Connection Fee: At the time application of access is made, each customer shall pay a new customer access fee in the amount set forth in subsection (B) of this section. The new customer connection fee is a one time, non-refundable, account activation fee, which is intended to cover the City's initial costs for the following services:

- (1) Engineering costs associated with fiber strand allocations
- (2) Fiber splicing activities
- (3) Continuity testing of the associated backbone fiber strands
- (4) Account and billing setup

(E) Distribution Installation Costs: Distribution installation costs will be estimated on a case by case basis. The City's network engineering staff will determine the most economical route to provide distribution service or access to the customer location that satisfies the City's requirements for reliability, efficiency, splice limitations and system loss. An estimate of the construction costs will be presented to the customer for approval prior to commencing any work. Once the estimate is accepted by the customer, the construction will be done by the City with actual final costs being billed to the customer. The Director may require such estimate to be paid in full not less than thirty (30) days prior to the start of construction, or alternatively if the customer desires to execute an amortization agreement, then such executed amortization agreement shall be delivered to the Director not less than thirty (30) days prior to the start of construction. Any amounts incurred in excess of such estimate shall be billed to and paid by the customer prior to the delivery of fiber optic access.

(F) Distribution Engineering Fee: A one-time service drop fee for engineering will be charged for each service drop requested by the customer and shall be added to and included within the estimated installation fees and costs. The fee will cover costs for the preparation of installation and construction cost estimates, schedule of work, route map, fiber loss budget, splicing and activation and certification test results.

(G) Distribution Access Fee: A monthly access fee shall be charged for the use of one distribution pair of fiber. This charge covers the City's operation and maintenance costs for the distribution line.

(H) Cost Sharing Payment or Credit: Upon receipt of an application for access from a subsequent customer, the Director shall calculate the cost-sharing charge to be borne by the subsequent customer, according to Section 8-13-26 of this Chapter. The charge is only applicable if a subsequent customer makes use of a portion of a distribution line constructed by an initial customer or if another subsequent customer makes use of a distribution line paid for by a preceding subsequent customer.

(I) Disconnect or Reconnect Fees: In the event any wholesale customer requests a disconnection or reconnection of any Retail Internet User served by such wholesale customer, to any distribution fiber or to the fiber backbone, the Director may charge a disconnect or reconnect fee to such wholesale customer, in an amount equivalent to the reasonable cost of

labor or materials incurred by the City in making such disconnection or reconnection. (Ord. 2835, 4-22-10; Ord. 2964, 8-14-14)

8-13-28:       **TAMPERING WITH FIBER OPTIC NETWORK PROHIBITED:** No person shall connect to, adjust, tamper with or make any alteration or addition to the Fiber Optic System, without having first obtained express permission from the Director. Any person who willfully or maliciously causes damage to, interference with or obstruction to the efficient operation of the Fiber Optic System shall be guilty of a misdemeanor. Any person who causes such damage shall in addition to any criminal fines or penalties, be liable to the City for any reasonable damages which may be proximately caused by such damage or interference. Such amounts may be included upon the customer's regular monthly billing statement for utility service and upon the customer's failure or refusal to pay such charges, fiber optic access or any other public utility service provided by the City, may be terminated in accordance with the procedures set forth in this Chapter. (Ord 2835, 4-22-10)

8-13-29:       **THEFT OF FIBER OPTIC ACCESS:** It shall be unlawful for any person to make any connection to or install or construct any facility or equipment with the specific intent of obtaining fiber optic access from or making use of the Fiber Optic System, without paying for such access or without paying the fees and charges set forth in this Chapter. (Ord 2835, 4-22-10)

## **CHAPTER 14**

### **CONSTRUCTION SITE EROSION CONTROL**

#### **SECTION:**

- 8-14-1: Purpose
- 8-14-2: Definitions
- 8-14-3: Permits
- 8-14-4: Review and Approval
- 8-14-5: Erosion Control Plan
- 8-14-6: Inspections
- 8-14-7: Training and Certification
- 8-14-8: Enforcement
- 8-14-9: Effective Date

8-14-1: **PURPOSE:** This Chapter sets forth requirements for construction site operators and enables the City to comply with the Clean Water Act. The objectives of this Chapter are:

(A) To protect storm water, ground water, water bodies, water courses, and wetlands from construction activities pursuant to and consistent with the United States Clean Water Act (33 U.S.C. Section 1251 et. Seq.) as the same is currently in effect or as may be amended hereafter.

(B) To manage and control the amount of pollutants in storm water discharges, soil erosion, sediment discharge, and mud and dirt deposits on public roadways caused by or the result of construction activities.

(C) To regulate construction activities, storm water management and soil conservation measures are utilized at the site of any construction activity.

(D) To ensure adequate drainage, storm water management and soil conservation measures are utilized at the site of any construction activity. (Ord. 2886, 11-10-11)

#### 8-14-2: **DEFINITION OF TERMS:**

Certain terms used in this Ordinance shall have the following meanings:

**CHANGE IN GRADE:** Any excavation, placement, removal or relocation of top soil or subsurface materials in any manner which results in or causes a change in grade or elevation of any portion of a Construction Site.

**CITY:** The City of Idaho Falls.

**CITY ENGINEER:** The City Engineer or a designated agent.

**CONSTRUCTION ACTIVITY:** The construction, repair, rehabilitation of any structure or improvement to real property which involves any excavation, grading, transportation or movement of topsoil or native rock to or from a Construction Site or which creates a significant chance that soil erosion will transport soil from the Construction Site in the public gutters or sewer.

**CONSTRUCTION SITE:** Any parcel of real property greater than 4,000 square feet in surface area located wholly in or partially within the City and where a Construction Activity or Change in Grade is undertaken or intended to be undertaken. (Ord. 2915, 02-28-13)

#### 8-14-3:PERMITS:

(A) Permit Required. It shall be unlawful for any person to undertake any Construction Activity or Change in Grade without first obtaining a permit under this Chapter.

(B) No Construction Activity Without Permit. It shall be unlawful for any person to engage in any Construction Activity or Change in Grade except in compliance with an erosion control plan approved by the City Engineer in accordance with the provisions of this Chapter.

(C) Exemptions: The following construction of land disturbing activities do not require a permit:

- (1) Minor land disturbance activities performed by the property owner or an employee of the property owner, including, but not limited to, home gardening, commercial and residential landscaping and landscaping maintenance and minor repair work.
- (2) Repair of structures and utility work which occurs entirely on a residential lot in which no sediment leaves the property.
- (3) Drain tiling, tilling, or planting incidental to agricultural crops, and harvesting of agricultural, horticultural, or silvicultural crops.
- (4) Emergency repairs or emergency work necessary to protect life, limb, or property.
- (5) The cleaning and/or removal of debris and obstructions from any existing ditch, canal, creek or river.
- (6) The repair, installation or removal of any water line, sewer line, electric line, CATV line, gas line or computer cable occurring solely within the public right-of-way.

(D) Application for Permit. Each application for an erosion control permit shall be upon a form provided by the City and shall bear the mailing address and legal description of the site, the name(s) and address(es) of the owner(s) of the site, the names and mailing addresses of all contractors or persons who engage in any Construction Activity on the Construction Site, the name of the certified erosion control contractor who will have responsible charge of the Construction Activity, the name of any engineer or professional consulting firm retained by the applicant to design, inspect and have responsible charge of such Construction Activity. The application shall be accompanied by a filing fee, the amount of which shall be set by a Resolution adopted by the City Council. Each application shall be accompanied by an erosion control plan, the contents of which shall be established by the City Engineer. The erosion control plan must bear the signature and certification number of an individual who possesses a valid and current certification in accordance with Section 8-14-7 of this Chapter and who has demonstrated competence in proper methods of erosion control and who is knowledgeable of federal, state, and local laws and regulations regarding erosion control and methods of preventing pollution and deposit of sediment into natural streams.

(E) Compliance with Plan Required. It shall be unlawful for any person to engage in, control, or otherwise have responsible charge of any Construction Activity or Change in Grade which does not comply with an approved erosion control plan. (Ord. 2915, 02-28-13) (Ord. 2915, 02-28-13)

#### 8-14-4: REVIEW AND APPROVAL:

(A) The City Engineer will review each application for an erosion control permit and shall, in writing:

- (1) Approve the permit application;
- (2) Approve the permit application with reasonable conditions as may be necessary to secure the objectives to this ordinance; or
- (3) Disapprove the permit application and provide the reasons for such disapproval in writing. (Ord. 2886, 11-10-11)

#### 8-14-5: EROSION CONTROL PLAN:

(A) the contents and form of the erosion control plan shall be established by the City Engineer. The Building Division shall make such information available to contractors, developers and property owners upon request.

(B) The erosion control plan shall address the best management practices (BMPs) to assure the following standards or practices are followed during land disturbing activities:

- (1) Erosion, sediment, or discharge of pollutants, resulting from construction activities, which enter onto public property or private

property not controlled by the permit holder, shall be eliminated to the maximum extent practicable.

- (2) All necessary action shall be taken to minimize the depositing and tracking of mud, dirt, sand, gravel, rock or debris on the public rights-of-way. The owner of the site of the construction activity or the permit holder shall be responsible for any clean-up of the public rights-of-way or private property not controlled by the permit holder necessitated by any tracking or depositing of mud, dirt, sand, gravel, rock, or debris, or shall reimburse the City for any expenses incurred by the City to clean-up the applicable area.
- (3) Construction ramps shall be constructed of material that will not erode or deteriorate under adverse conditions and shall not be placed in a manner so as to interfere with the passage of storm water runoff.
- (4) No debris, dirt, aggregate or excavated materials, or construction materials shall be placed on the public rights-of-way unless permitted by the City Engineer or his designee. In addition, public sidewalks shall not be removed, blocked, or otherwise rendered unusable by construction activity, equipment or materials, or portable toilets, unless a safe, usable alternate walkway, which meets the design standards of the American with Disabilities Act, is placed on the same side of the right-of-way by the contractor.
- (5) No owner or lessee of real property shall allow the property to be unoccupied, unused, vacant or undeveloped after the topsoil has been disturbed or the natural cover removed, unless control measures are undertaken to prevent mud, sand, dirt, and gravel from mitigating offsite and entering the public rights-of-way or a storm water system. Soil or aggregate stockpiles shall not be stored on unoccupied, vacant, unused, or undeveloped property unless appropriate control measures are in place and reviewed and permitted by the City Engineer. This provision is not meant to prevent individual homeowners from accepting title of land that is not yet landscaped, and such homeowners will not be in violation of this Ordinance.
- (6) All temporary erosion and sediment control measures shall be removed after final site stabilization. Trapped sediment and other disturbed soil areas resulting from the removal of temporary measures shall be permanently stabilized within thirty (30) days from the removal of the temporary measures.

- (7) Grading, erosion control practices, sediment control practices, and waterway crossings shall meet the design criteria set forth in the Best Management Practices for Idaho Cities and Counties, published by the Idaho Department of Environmental Quality.
- (8) Clearing, except that necessary to establish sediment control devices, shall not begin until all sediment control devices have been installed and have been stabilized.
- (9) Phasing shall be required on all sites greater than thirty (30) acres with the size of each phase to be established at plat review and as approved by the City Engineer. (Ord. 2886, 11-10-11; Ord. 3003, 4-23-15)

8-14-6: INSPECTIONS:

(A) The City Engineer or designated agent shall make inspections, approve the work completed, and/or notify the permit holder when the work fails to comply with the erosion control plan and permit as approved. A copy of the erosion control plan shall be maintained at the Construction Site at all times while construction work is being conducted. To obtain inspections, the permit holder shall notify the Building Division at least two (2) working days before the start of construction, installation of sediment and erosion measures, completion of final grading and close of construction season or final landscaping.

(B) The purpose of inspections is to determine compliance with the control plan and its effectiveness. All inspections are to be documented in written form.

(C) Filing of an application with the Building Division is deemed approval and authorization for such inspections at reasonable times. (Ord. 2886, 11-10-11; Ord. 3003, 4-23-15)

8-14-7: TRAINING AND CERTIFICATION:

(A) Any person who successfully completes a City approved training program in construction erosion control shall be recognized as a certified erosion control contractor. Fees for the issuance of such certification shall be set by resolution of the City Council.

(B) City certifications shall expire on December 31 of the third calendar year following issuance of the certification. A change of employment has no effect on the validity of such certification. (Ord. 2915, 02-28-13)

(C) Certifications from other cities, states or associations may be accepted upon approval of the City Engineer. (Ord. 2886, 11-10-11)

8-14-8: ENFORCEMENT:

(A) If the City Engineer or designated agent determines a violation of the approved erosion control plan is occurring or has occurred, the permit holder may be notified by a correction notice. Such notice shall contain a description of the violation and provide a time period in which corrective action must be taken.

(B) If the corrective action is not taken, a stop work order may be placed on the site or a citation may be issued.

(C) If no reasonable effort at corrective action is made or if necessitated by an emergency, the City Engineer may cause the corrective action to be performed and shall assess the actual and administrative costs of such performance against the property owner.

(D) A stop work order may be issued at any time Construction Activities or Changes in Grade are being undertaken without a valid, current permit. (Ord. 2886, 11-10-11)

8-14-9: EFFECTIVE DATE: This Chapter shall be effective with respect to any Construction Activity or Change of Grade which commences or occurs on or after the effective date of this Chapter. (Ord. 2886, 11-10-11)